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Bill 66

An Act to revise the Teachers' Superannuation Act, 1983 and to make related amendments to the Teaching Profession Act

The Hon. S. Conway
Minister of Education



1st Reading October 19th, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill will continue the existing pension plan established under the *Teachers' Superannuation Act, 1983* (which contains the basic pension plan) and the *Superannuation Adjustment Benefits Act* (which requires inflation adjustments for benefits payable under the basic plan).

Changes will be made respecting who is eligible to become a member of the plan, the level of contributions required under the plan and certain rules governing pension transfers and the purchase of credit under the plan. Certain provisions of the pension plan concerning entitlement to benefits and the administration of the plan will be changed to meet the requirements of the *Pension Benefits Act, 1987*. Additional technical changes are made with respect to the administration of the plan.

Three alternative mechanisms for amending the pension plan will be provided. Initially, the Lieutenant Governor in Council will be able to amend the plan by order. The Bill will permit the government to enter into an agreement with the members to establish joint control or member control over the plan. In the event of an agreement for joint control, amendments to the pension plan will be made according to the terms of the agreement. In the event of an agreement for member control, Schedule 1 (containing the details of the plan) will be repealed and amendments to the plan will be made by the members. Ownership of surplus and responsibility for deficits that may arise under the pension plan will be concomitant with control over the plan.

An Ontario Teachers' Pension Plan Board will be created to administer the pension plan and pension fund. If the government enters into an agreement with the members concerning control of the pension plan, the structure, powers and duties of the Board will be altered in accordance with the agreement.

Custody of the pension fund will be transferred from the Treasurer to the Board. The Treasurer will be responsible for paying any deficit that may exist when the pension fund is transferred to the Board.

Related amendments to the *Teaching Profession Act* will authorize the Ontario Teachers Federation to enter into agreements with the government concerning the pension plan and to represent the members of the pension plan in governing the plan.

The Bill is structured as an Act with two Schedules. The Act contains the particulars of the continuation of the pension plan (sections 2 to 5), the establishment of the Board (sections 6 to 8), the amending mechanisms (sections 9 to 12), the transfer of the pension fund from the Treasurer to the Board (section 13), transitional provisions (sections 14 to 16) and the amendments to the *Teaching Profession Act* (section 17).

Schedule 1 contains the details of the pension plan.

Schedule 2 requires a valuation of the pension fund as of the date it is transferred from the Treasurer to the Board. It also provides for special monthly payments by the Treasurer to liquidate the unfunded liability of the plan as it exists when custody of the fund is transferred.

CHANGES TO THE PENSION PLAN:

The following are the key changes in the terms of the pension plan:

1. *Membership.* Eligibility criteria for active membership in the plan are specified. (*Sections 2 to 9 of Schedule 1*) Full-time and contractual part-time employees who are qualified as teachers are required to become members, while occasional employees may elect to join the pension plan.
2. *Contributions.* The amount of required contributions is increased. (*Sections 17, 20, 23 and 24 of Schedule 1*)

3. *Benefits.* Changes required by the *Pension Benefits Act, 1987* include the following:

A person's entitlement to a pension for his or her post-1986 employment vests and his or her contributions are locked in after two years of continuous membership in the plan. (*Sections 29 to 34 of Schedule 1*)

If a member entitled to a pension dies before beginning to receive it, the member's spouse, beneficiary or estate is entitled to a benefit based on the member's post-1986 employment. (*Sections 60 to 65 of Schedule 1*)

The amount of a spouse's survivor pension is increased from 50 per cent to 60 per cent of the member's pension, with a corresponding reduction in the amount of the member's pension. The member and spouse can waive the increase. (*Section 67 of Schedule 1*)

A pensioner who marries after retirement may elect to provide a survivor pension for a spouse, with a corresponding reduction in the amount of the member's pension. (*Sections 69 to 71 of Schedule 1*). (This change is not required by the *Pension Benefits Act, 1987*).

4. *Pension transfer and purchase of credit.* A person who ceases to be an active member of the pension plan may transfer his or her pension benefit to another pension plan or locked-in retirement savings arrangement. (*Section 35 of Schedule 1*)

The rules governing purchases of credited service are set out: for a leave of absence or a break in service (*section 93 of Schedule 1*); for an absence for a religious holiday (*section 94*); for an absence due to a strike or lockout (*section 95*); for a repurchase by a former member who rejoins the plan (*section 96*); for approved service outside Ontario (*section 97*); for service in specified circumstances at a designated private school (*section 98*); and, for other employment (*sections 99 to 102*).

Beginning in 1992 for most purchases of credited service, the member will be required to pay the actuarial cost of the pension improvement being purchased. This includes purchases made under a reciprocal agreement with another pension plan. (*Sections 93, 96, 97, 101 to 104 of Schedule 1*)

Bill 66

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related amendments to the Teaching Profession Act**

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**ONTARIO TEACHERS' PENSION
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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“active plan member”, of the pension plan, means a person who is making the contributions required of an active member of the plan;

“Board” means the Ontario Teachers’ Pension Plan Board;

“Minister” means the Minister of Education;

“pension fund” means the pension fund maintained to provide benefits in respect of the Ontario Teachers’ Pension Plan;

“pension plan” means the Ontario Teachers’ Pension Plan.

Pension plan continued

1983, c. 84

R.S.O. 1980, c. 490

2.—(1) A pension plan to be known as the Ontario Teachers’ Pension Plan continues the pension plan set out in the *Teachers’ Superannuation Act, 1983* and the regulations thereunder, including the benefits provided under the *Superannuation Adjustment Benefits Act* in relation to the pensions provided under the *Teachers’ Superannuation Act, 1983*.

Defined benefits plan
1987, c. 35

(2) The pension plan shall be a defined benefit plan within the meaning of the *Pension Benefits Act, 1987*.

Plan documents

(3) The terms of the pension plan are as set out in Schedule 1 to this Act and in such other governing documents as may be created or adopted under this Act or that Schedule.

Adminis-
trator
1987, c. 35
R.S.C. 1952, c. 148

3. The Board shall administer the pension plan and manage the pension fund in accordance with this Act, the *Pension Benefits Act, 1987* and the *Income Tax Act (Canada)*.

Pension fund
1983, c. 84

4. The Teachers’ Superannuation Fund established under the *Teachers’ Superannuation Act, 1983* is continued as the pension fund maintained to provide benefits in respect of the pension plan.

Contributions
by the
Crown

5.—(1) Unless otherwise required by this section, contributions under the pension plan payable by the Minister shall be paid out of moneys appropriated therefor by the Legislature.

Payments re
transitional
valuation

(2) The Treasurer shall make the payments required under Schedule 2.

Deficiency

(3) If in a year the amount of cash and assets capable of sale in the pension fund is insufficient to meet the payments out of the fund in the year after the sale of the assets capable of sale, the Treasurer shall pay from the Consolidated Revenue Fund an amount sufficient to make up the deficiency.

Limitation

(4) Subsection (3) ceases to apply if an agreement mentioned in subsection 11 (1) is in force.

Board
established

6.—(1) The Teachers’ Superannuation Commission is continued under the name of the Ontario Teachers’ Pension Plan Board and is constituted as a corporation without share capital.

(2) The *Corporations Act* does not apply with respect to the Board. Application of R.S.O. 1980, c. 95

7. The composition of the Board shall be as is prescribed by regulation. Composition of the Board

8. The powers and duties of the Board shall be those prescribed by regulation. Powers, etc., of the Board

9.—(1) The Lieutenant Governor in Council by order may amend the pension plan as set out in Schedule 1 and, without restricting the generality of the foregoing, may, Amendment of the plan

- (a) determine the methods or assumptions to be used to calculate any pension or other benefit, refund or interest rate provided under the plan;
- (b) increase or prospectively reduce, eliminate or modify any pension or other benefit, refund or interest rate set out in the plan;
- (c) vary or provide a method for determining a variation in the rate of contributions required to be paid under the plan;
- (d) extend, modify or restrict the conditions upon which persons may become members of the plan;
- (e) regulate the administration of the plan;
- (f) rescind the plan and replace it with another pension plan;
- (g) exercise with respect to any plan established under clause (f) the powers conferred by this subsection.

(2) To the extent that an amendment to the pension plan conflicts with the *Pension Benefits Act, 1987* in a matter in which the conflict is not authorized by this Act or Schedule 1, the amendment is void. Idem 1987, c. 35

(3) The *Regulations Act* does not apply with respect to an order amending the pension plan. Application of R.S.O. 1980, c. 446

10.—(1) The Lieutenant Governor in Council may enter into an agreement with the representatives of active plan members which provides for the following matters: Agreement for joint responsibility

- 1. The joint management of the plan by the Crown and representatives of the active plan members.

2. The sharing of entitlement to surplus under the plan and of liability for deficiencies in the pension fund by the Crown, the employers who contribute under the plan and the active plan members.
3. Prior consultation between the Crown and representatives of the active plan members concerning any change in benefits under the plan or in the rate or amount of contributions to the pension fund by the Crown or by active plan members.
4. Mediation procedures to be used if, after consultation, the Crown and the representatives are unable to agree upon a change in benefits or in the rate or amount of contributions.
5. The terms upon which the Lieutenant Governor in Council shall exercise the powers described in section 9.
6. Such other matters as the Lieutenant Governor in Council by order may provide.

Idem

(2) The Lieutenant Governor in Council shall prescribe the composition of the Board and the powers and duties of the Board in accordance with the terms of any such agreement.

Idem

(3) If the Lieutenant Governor in Council enters into an agreement as described in subsection (1), the agreement may provide that the Lieutenant Governor in Council shall exercise the powers set out in section 9 of this Act in accordance with the terms of the agreement.

Agreement
for member
responsibility

11.—(1) The Lieutenant Governor in Council, by order, shall repeal Schedule 1 upon the Crown entering into an agreement with the representatives of active plan members that provides for the following:

1. The pension plan will continue.
2. The entitlement to surplus and the liability for deficiencies in the pension fund is permanently assumed by the active plan members.
3. The liability of the Crown to contribute under the plan is limited to a specified amount or to a specified percentage of member contributions under the plan.

4. The members may amend the plan, subject to the restrictions described in paragraphs 2 and 3.
5. Such other matters as the Lieutenant Governor in Council by order may provide.

(2) The Lieutenant Governor in Council shall prescribe the composition of the Board and the powers and duties of the Board in accordance with the terms of any such agreement. Idem

12. The Lieutenant Governor in Council may make regulations, Regulations

- (a) governing the composition, powers and duties of the Board;
- (b) prescribing, for the purpose of subsection 4 (2) of Schedule 2, the applications to be made of an actuarial gain.

13.—(1) In this section, Transfer of pension funds

“Superannuation Adjustment Fund account” means the account maintained in the Superannuation Adjustment Fund under the *Superannuation Adjustment Benefits Act* in respect of the Teachers’ Superannuation Fund; R.S.O. 1980, c. 490

“Teachers’ Superannuation Fund” means the Teachers’ Superannuation Fund under the *Teachers’ Superannuation Act, 1983*. 1983, c. 84

(2) As of the 31st day of December, 1989, the Treasurer shall pay to the Superannuation Adjustment Fund interest at the rate and upon the terms determined by the Lieutenant Governor in Council on the cash balances that from time to time stood to the credit of the Superannuation Adjustment Fund account during the period from the 1st day of April, 1989 to the 31st day of December, 1989. Payment of accrued interest

(3) Interest payable by the Treasurer on assets in the Superannuation Adjustment Fund account held on the 1st day of April, 1989 shall be accrued to the 31st day of December, 1989 and paid as of that date despite a later time for payment specified in any instrument that provides for payment of the interest, and the payment made to the account reduces the liability of the Treasurer under the instrument for interest by the amount paid. Idem

(4) Payments under subsections (2) and (3) shall be made from the Consolidated Revenue Fund. Payment from Consolidated Revenue Fund

Transfer
from the
Superan-
nuation
Adjustment
Fund

(5) As of the 31st day of December, 1989, the Treasurer shall transfer from the Superannuation Adjustment Fund account to the Teachers' Superannuation Fund the assets and liabilities in the Superannuation Adjustment Fund account, including assets transferred and payments made to that account under this section, and, as of that date, the Superannuation Adjustment Fund account ceases to exist in the Consolidated Revenue Fund.

Issuance of
debentures

(6) The transfer of assets under subsection (5), other than debentures, shall be made by the issuance to the Teachers' Superannuation Fund of debentures of the Province of Ontario that are equal to the amount of the assets and that, in the Treasurer's opinion, provide for the payment of principal and interest on terms substantially equivalent to those on which the assets are held in the Superannuation Adjustment Fund account on the 31st day of December, 1989.

Idem

(7) Debentures referred to in subsection (6) may be in such amounts and upon such terms as to the payment of principal and interest, maturing at such time or times and either with or without the privilege of prepayment of the whole or any part of the principal amount of any such debenture as, in the Treasurer's opinion, meet the requirements of this section, and any debenture may provide that it is not assignable or transferable.

Transfer of
assets

(8) As of the 1st day of January, 1990, the Treasurer shall transfer to the custody and control of the pension fund the assets which are held by the Teachers' Superannuation Fund on the 31st day of December, 1989. *

Transfer of
liabilities

(9) As of the 1st day of January, 1990, all liabilities of the Teachers' Superannuation Fund become liabilities of the pension fund.

Investments
authorized
1987, c. 35

(10) Despite the *Pension Benefits Act, 1987* and the regulations thereunder, the receipt and holding by the Board of debentures issued or transferred under this section shall not be considered imprudent or unreasonable or contrary to that Act and the regulations thereunder, and the nature, amount and terms of the debentures may be taken into account by the Board and any committee of the Board in determining future investments of the assets of the pension plan.

Non-
application of
1987, c. 35,
s. 82

(11) Section 82 of the *Pension Benefits Act, 1987* does not apply to the transfers described in this section.

Temporary
account
authorized

(12) During the period from the 31st day of December, 1989 to the 30th day of June, 1990, the Treasurer may estab-

lish outside the Consolidated Revenue Fund one or more accounts for such period as the Treasurer considers advisable to facilitate the orderly transfer of assets to the pension fund and to facilitate administration of the pension plan.

14.—(1) The *Teachers' Superannuation Act, 1983*, as it reads on the 31st day of December, 1989, continues to apply to the computation or payment of every allowance, annuity, pension or deferred pension or payment to the payment of which a person has become entitled under that Act before that date, and continues to apply in respect of every person who, within the meaning of that Act, has ceased to be a contributor on or before that date and is entitled to a deferred allowance under that Act.

Continued
application
1983, c. 84

(2) The *Teachers' Superannuation Act, 1983*, as it reads on the 31st day of December, 1989, continues to apply in respect of every person who is entitled to a survivor benefit, death benefit, right or allowance with respect to contributions made by a person referred to in subsection (1).

Idem

15. Every allowance, pension or deferred pension or other payment under the *Teachers' Superannuation Act, 1983* or a predecessor Act or under the *Superannuation Adjustment Benefits Act*, including any payment authorized to be made from the Consolidated Revenue Fund, that, before the 1st day of January, 1990, a person is receiving, is entitled to receive, or is entitled to receive with the payment thereof deferred until the year 1990 or later, shall be paid out of the pension fund in accordance with the Act under which entitlement to the payment arose.

Payment of
pensions,
predecessor
Acts
1983, c. 84
R.S.O. 1980,
c. 419

16. All agreements entered into before the 31st day of December, 1989 by the Teachers' Superannuation Commission under the authority of clause 75 (1) (g) of the *Teachers' Superannuation Act, 1983* are continued and expire on the 30th day of June, 1990.

Certain
agreements
continued

17.—(1) Section 3 of the *Teaching Profession Act*, being chapter 495 of the Revised Statutes of Ontario, 1980, is amended by striking out "and" at the end of clause (d), by adding "and" at the end of clause (e) and by adding thereto the following clause:

- (f) to represent all members of the pension plan established under the *Teachers' Pension Act, 1989* in the administration of the plan and the management of the pension fund.

1989, c....

(2) Section 9 of the said Act is amended by adding thereto the following clause:

- 1989, c....
- (d) act as the representative of the members of the pension plan established under the *Teachers' Pension Act, 1989* including carrying out the following functions:
1. Appointing persons to be members of the Ontario Teachers' Pension Plan Board created under that Act.
 2. Entering into an agreement with the Crown as described in section 10 or 11 of that Act.
 3. Negotiating, agreeing to or directing amendments to the plan as permitted under that Act or an agreement entered into under that Act.
 4. Entering into an agreement on behalf of the Federation to indemnify a person appointed under paragraph 1 against any costs sustained with respect to legal proceedings arising out of an act or omission done in the execution of that person's duties as a member of the Ontario Teachers' Pension Plan Board.

Repeals

18. The following are repealed on the 1st day of January, 1990:

1. The *Teachers' Superannuation Act, 1983*, being chapter 84.
2. The *Teachers' Superannuation Amendment Act, 1986*, being chapter 13.
3. The *Teachers' Superannuation Amendment Act, 1987*, being chapter 19.
4. Section 75 of the *Family Law Act, 1986*, being chapter 4.
5. Section 68 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64.

Commence-
ment

19.—(1) This Act, except Schedule 1, comes into force on the 31st day of December, 1989.

Idem

(2) Schedule 1 comes into force on the 1st day of January, 1990.

20. The short title of this Act is the *Teachers' Pension Act, 1989*. Short title

SCHEDULE 1

ONTARIO TEACHERS' PENSION PLAN

PART I

INTERPRETATION

1.—(1) In this Schedule,

Definitions

“active member” means a person employed in education who is making contributions under the plan and includes a person receiving long-term income protection benefits under an agreement approved by the employer and by whom or on whose behalf contributions are being made;

“active member on LTIP” means an active member as described in section 6;

“administrator” means the board of governors;

“average salary”, of a member, means the average salary determined in accordance with section 14;

“board of education” has the same meaning as “board” in subsection 1 (1) of the *Education Act*;

R.S.O. 1980,
c. 129

“child” has the same meaning as in subsection 1 (1) of the *Family Law Act, 1986*;

1986, c. 4

“date of disability”, of an active member on LTIP, means the date on which the member ceases to be employed in education as a result of the disability;

“dependent child”, of a deceased member, means a child who,

(a) is less than eighteen years of age,

(b) is eighteen or more years of age but less than twenty-five years of age and is in full-time attendance at a school or university, having been in such attendance substantially without interruption since the child reached eighteen years of age or since the member died, whichever occurred later, or

(c) is a child other than a child described in clause (b), is eighteen or more years of age and is disabled, having been disabled without interruption since the time the child reached eighteen years of age or since the member died, whichever occurred later;

“designated organization” means an organization designated under subsection 115 (2);

“designated private school” means a school designated under subsection 115 (1);

“employed in education” means employed as described in section 2, 7, 8 or 9;

"member" means a person who, as a result of his or her employment in education, is entitled to benefits or to a refund of contributions under the pension plan;

"re-employed pensioner" means a member receiving a retirement pension who becomes employed in education;

"school year" means the twelve-month period that begins on the 1st day of September;

1987, c. 35 "spouse" has the same meaning as in section 1 of the *Pension Benefits Act*, 1987;

"standard interest rate" means the interest rate determined under section 88;

R.S.C. 1985, c. C-8 "Year's Maximum Pensionable Earnings", in relation to a year, means the Year's Maximum Pensionable Earnings prescribed under the *Canada Pension Plan*.

Qualification
as a teacher

(2) A person is considered to be qualified as a teacher,

- (a) if the person holds a valid certificate of qualification or a letter of standing as a teacher in Ontario; or
- (b) if a board of education has a letter of permission granted by the Minister of Education in respect of the person.

Employment

(3) A person is considered to be employed,

- (a) full-time, if the person is required to work throughout each work day of a year or of a session; and
- (b) part-time, if the person is required to work on a regular but not full-time basis.

Idem

(4) A person is considered to be employed on an occasional basis as a teacher and not part-time if the person is an occasional teacher within the meaning of section 1 of the *Education Act*.

R.S.O. 1980, c. 129

PART II

PARTICIPATION

A. Membership in the Plan

Eligibility for
membership

2.—(1) Every person is eligible to be an active member of the pension plan who is qualified as a teacher and is employed,

- (a) as a teacher in a school within the meaning of subsection 1 (1) of the *Education Act*;
- (b) as a teacher in a school outside Ontario under a teacher exchange system authorized by the Minister of Education;
- (c) as a teacher by the minister of a ministry of the Government of Ontario;
- (d) as a teacher in a school or a class operated by the Metropolitan Toronto and Region Conservation Authority; or

(e) by a board of education.

(2) Every person is eligible to be an active member of the pension plan who is qualified as a teacher and is employed, Idem

(a) as a teacher in a designated private school; or

(b) in a designated capacity by a designated organization.

(3) No person is eligible to be an active member of the pension plan, Exception

(a) if the person is regularly employed outside Ontario and is performing services in Ontario under a teacher exchange system approved by the Minister of Education;

(b) if the person contributes to a pension fund to which the Crown contributes, other than the *Canada Pension Plan*, the *Quebec Pension Plan* or the fund established under this plan; or

R.S.C. 1985,
c. C-8
R.S.Q. 1977,
c. R-9

(c) if the person is seventy-one or more years of age.

3.—(1) Every person employed as described in subsection 2 (1) full-time or part-time becomes an active member of the plan on the later of, Commencement of membership

(a) the 1st day of January, 1990; or

(b) the date the employment contract begins.

(2) Subject to subsection 5 (1), every person employed as described in subsection 2 (2) full-time or part-time becomes an active member of the plan on the day that is the latest of, Idem

(a) the 1st day of January, 1990;

(b) the date the employment contract begins; or

(c) the date the designation of the private school or the organization is effective.

(3) Subject to subsection 4 (1), every person employed in education on an occasional basis may elect to become an active member on or after the person's first day of employment in a school year. Idem

(4) Despite subsections (1), (2) and (3), every member receiving a retirement pension under the pension plan or a predecessor Act who becomes re-employed in education becomes an active member on the earlier of, Commencement of membership, re-employed pensioner

(a) the member's ninety-sixth day of employment in a school year; or

(b) the member's first day of employment in education following three school years during each of which the member has been re-employed for fewer than ninety-six days.

(5) For the purpose of clause (4) (b), the member's employment in education, if any, before the 1st day of January, 1990 shall not be considered. Idem

(6) A member receiving a retirement pension under the pension plan or a predecessor Act who becomes re-employed in education may elect to become an active member immediately upon becoming re-employed. Idem

Election re
occasional
employee

4.—(1) A person employed in education on an occasional basis who elects to become an active member continues to be an active member in any year in which he or she is employed in education after making the election unless the person has terminated membership under Part IV.

Obligations

(2) An active member described in subsection (1) shall inform the member's employer of his or her active membership whenever he or she becomes re-employed in education after making the election.

Election re
designated
private
schools, etc.

5.—(1) A person employed at a designated private school or a designated organization on the date the designation becomes effective may elect not to become an active member of the plan.

Time for
election

(2) An election under this section is not effective unless delivered in writing to the governing body of the designated private school or designated organization and to the administrator,

(a) not later than three months after the effective date of designation for the private school or organization, if the person is qualified as a teacher when the designation takes effect; or

(b) not later than three months after the date the person becomes qualified as a teacher, if the person is not so qualified on the effective date of designation for the private school or organization.

Active
member on
LTIP

6.—(1) An active member who ceases to be employed in education because of a disability and who is receiving payments under a long term income protection agreement approved by the administrator or the member's employer or former employer is entitled to continue as an active member of the plan.

Eligibility

(2) A person's eligibility to be an active member under this section ceases on the day that is the earlier of,

(a) the normal retirement date of the member; or

(b) the day the member begins receiving a pension under the pension plan.

Idem

(3) The active membership of a person described in subsection (1) continues only if the contributions required from an active member under the pension plan are made by or on behalf of the person.

Definition

(4) In subsection (1), "agreement" means an agreement to provide long term income protection in the event of a member's long term disability that is entered into by an insurer within the meaning of section 1 of the *Insurance Act* and,

R.S.O. 1980,
c. 218

(a) the Minister of Education;

(b) a board of education;

R.S.O. 1980,
c. 495

(c) the Ontario Teachers' Federation established under the *Teaching Profession Act*;

R.S.O. 1980,
c. 464

(d) an affiliate within the meaning of section 1 of the *School Boards and Teachers Collective Negotiations Act*; or

(e) an authority approved by the administrator.

Active
membership,
university
faculty

7.—(1) A member who, during an absence as defined in subsection 93 (1), becomes employed on the staff of a faculty of education of an

Ontario university on or after the 1st day of January, 1990 is an active member of the plan.

(2) A person is eligible for active membership under this section for a maximum of five school years. Limitation

8.—(1) A person who, on the 1st day of January, 1990, is qualified as a teacher and is employed full-time on the staff of a faculty of education of an Ontario university is an active member of the plan as long as the person continues in full-time or part-time employment at such a faculty. Transitional re universities

(2) A person who, on the 1st day of January, 1990, is qualified as a teacher and is employed part-time on the staff of a faculty of education of an Ontario university is an active member of the plan as long as the person continues either part-time or full-time employment at such a faculty. Idem, part-time employee

9.—(1) This section applies with respect to a person who,

Transitional re Ryerson, CAATs

(a) is qualified as a teacher and is employed by Ryerson Polytechnical Institute; or

(b) was deemed, under a predecessor of this Act, to be employed in education by a college of applied arts and technology.

(2) A person who, on the 1st day of January, 1990, has been employed full-time by Ryerson Polytechnical Institute or a college of applied arts and technology continuously since the 1st day of September, 1984 is an active member of the pension plan as long as the person continues in full-time employment either at Ryerson or at such a college. Idem, full-time employee

(3) A person who, on the 1st day of January, 1990, has been employed part-time by Ryerson Polytechnical Institute or a college of applied arts and technology continuously since the 1st day of September, 1984 is an active member of the pension plan as long as the person continues in part-time or full-time employment either at Ryerson or at such a college. Idem, part-time employee

B. Credit for Service

10.—(1) An active member receives one year of credited service for working the number of hours or days normally worked during a school year by a full-time employee in the occupational group in which the member is employed. Credited service

(2) An active member receives credited service for part of a year in the proportion that the number of hours or days worked by the member during the school year bears to the number of hours or days normally worked during a school year by a full-time employee in the occupational group in which the member is employed. Idem, partial year

(3) A person shall not receive credited service for employment unless contributions in respect of the employment are made by or on behalf of that person. Limitation

(4) No person is entitled to receive more than one year of credited service in respect of the person's employment during one school year. Idem

(5) Subject to subsection (6), no person is entitled to accumulate more than thirty-five years of credited service under the plan. Idem

(6) A member who accumulates thirty-five years of credited service may continue to accumulate credited service until the month in which he or Exception

she reaches the age which, when added to the member's credited service, equals ninety.

Partial year **11.—**(1) The length of a member's credited service determined under this section applies for the purpose of determining the member's entitlement to a benefit but does not apply for the purpose of calculating the amount of the benefit.

Idem (2) If an active member accumulates more than twenty days but less than one year of credited service as determined under section 10 during one school year, the member's credited service shall be considered to be credited service for the whole year.

Idem (3) Subsection (2) does not apply with respect to a school year in which the member receives a pension.

Idem (4) For a person who becomes employed in education for the first time on or after the 1st day of January, 1990, subsection (2) does not include the part of a school year, if any, that precedes the date on which the person first becomes an active member.

Idem (5) Subsection (2) does not apply with respect to credited service purchased by a member for a period when the member was not employed in education.

C. Calculation of Pensionable Salary

Pensionable salary **12.—**(1) A member's pensionable salary for a school year is the remuneration paid to the member during the school year respecting employment in education and excludes,

- (a) remuneration for services other than for employment in education;
- (b) perquisites related to employment;
- (c) payments related to accumulated sick leave or other employment benefit credits;
- (d) payments related to retirement or termination of employment; or
- (e) payments to reimburse the member for expenses incurred during the course of employment.

Idem (2) Pensionable salary excludes the amounts described in clauses (1) (a) to (e) whether paid under a contract or gratuitously by an employer.

Idem (3) The pensionable salary of a member who receives board or lodging related to employment in education shall be deemed to be such amount, having regard for the value of the board or lodging, as is determined by the administrator.

Idem (4) The pensionable salary of a member who receives a refund of contributions under section 27 (overpayments) shall be reduced in the proportion that the amount of the refunded contributions bears to the amount of contributions originally paid for the year.

Pensionable salary re active member of LTIP **13.—**(1) Subject to subsection (2), the pensionable salary of an active member on LTIP is the amount of his or her pensionable earnings, expressed as an annualized amount, for the last school year before the member began receiving LTIP benefits.

(2) The pensionable salary for a school year for an active member on LTIP whose contribution is made under subsection 20 (2) shall be considered to be the amount used to calculate the amount of the contribution. Idem

14.—(1) The average salary of a member, Average salary

- (a) with more than five years' credited service is the average of the member's annual pensionable salary for the five school years during which it was highest; and
- (b) with five years' or less credited service is the average of the member's annual pensionable salary.

(2) For the purpose of determining the average salary of a member employed more than twenty days but less than an entire school year or an active member on LTIP whose LTIP payments are based upon a less than full-time salary, the annual pensionable salary of the member is calculated using the formula, Part-time or occasional employee

$$(A / B) \times (C - D)$$

in which,

“A” is the amount of the member's pensionable salary for the school year,

“B” is the lesser of,

- (a) the number of days of credited service accumulated by the member during the school year, and
- (b) the number of days that the administrator determines are normally worked during a school year by a full-time employee in the same occupational group as the member,

“C” is the number of days worked during a school year by a full-time employee in the same occupational group as the member, and

“D” is the sum of the number of days in the school year before the member first becomes employed in education and the number of days in the school year after the member ceases to be employed in education.

(3) If a member purchases credited service for all or part of a year, the member's average salary may be calculated using his or her salary for that year only if the member, Restriction

- (a) purchases credited service for the whole year; or
- (b) purchases credited service for part of the year and is employed in education for the rest of it.

D. Transitional

15.—(1) Every person who has credit in the Teachers' Superannuation Fund on the 31st day of December, 1989 and who is not entitled to an allowance under a predecessor of this Act becomes an active member of the pension plan upon completing one day of employment in education on or after the 1st day of January, 1990. Transitional re membership

Idem, active member on LTIP
1983, c. 84

(2) Every person who was making contributions or on whose behalf contributions were being made on the 31st day of December, 1989 under an agreement referred to in section 4 of the *Teachers' Superannuation Act, 1983* or under a predecessor of that section is considered to be an active member on LTIP.

Transitional re credited service

16. Every active member shall be considered to have accumulated credited service under the pension plan in an amount equal to the credit for service that he or she had accumulated under a predecessor of this Act.

Re-employed pensioners

17. A re-employed pensioner making contributions under the pension plan or a predecessor of this Act on or after the 1st day of September, 1989 up to the 1st day of January, 1990 is entitled to a refund of contributions, if any, made in respect of the first ninety-five days or less of employment during that period.

PART III

CONTRIBUTIONS

A. Member Contributions

Amount of member's contribution
R.S.C. 1985, c. C-8
R.S.Q. 1977, c. R-9

18.—(1) Every active member who is required to contribute to the *Canada Pension Plan* or to the *Quebec Pension Plan* shall contribute for a year,

- (a) 8.9 per cent of that portion of the member's pensionable salary below the amount of the Year's Basic Exemption as prescribed under the *Canada Pension Plan*;
- (b) 7.1 per cent of that portion of the member's pensionable salary from the amount of the Year's Basic Exemption up to and including the amount of the Year's Maximum Pensionable Earnings; and
- (c) 8.9 per cent of that portion of the member's pensionable salary that exceeds the amount of the Year's Maximum Pensionable Earnings.

Idem

(2) Every active member who is not required to contribute to the *Canada Pension Plan* or to the *Quebec Pension Plan* shall contribute 8.9 per cent of the member's pensionable salary for the year.

Pensionable salary

(3) For the purpose of calculating the contributions of a member whose pensionable salary is less than \$10,000, the member's pensionable salary shall be deemed to be \$10,000.

Collection of member contributions

19.—(1) The employer of an active member shall deduct the amount the member is required to contribute under section 18 from the salary paid to the member.

Transfer of amount deducted

(2) An employer shall deliver to the administrator or deposit to the account of the pension fund on or before the last day of each month in which a member's salary is paid the amount deducted for the member's contribution.

Interest payable

(3) An employer shall pay interest on amounts in arrears from the date the payment is due to the date it is made, calculated at the standard interest rate plus 4 per cent.

Report to administrator

(4) An employer shall make such reports to the administrator as the administrator requires in respect of member contributions.

- 20.—(1)** The amount of the required contribution for an active member on LTIP, Contributions re active member on LTIP
- (a) before the 1st day of January, 1991, is 6.9 per cent of the member's pensionable salary; and
 - (b) after the 31st day of December, 1990, is 8.9 per cent of the member's pensionable salary.
- (2) An active member on LTIP may elect to increase his or her required contribution by calculating it using an amount selected by the member that is, Inflation-adjusted pensionable salary
- (a) not less than the member's pensionable salary; and
 - (b) not greater than the amount of the member's pensionable salary after it is adjusted for inflation under section 79 as if it were a pension.
- (3) An election under subsection (2) shall be made before the 30th day of November in the year to which it applies by giving notice of the election to the person who was the employer of the active member on LTIP on the date of disability. Restriction re election
- (4) An active member on LTIP shall give notice on the first day of each school year to the person who was his or her employer on the date of disability that the member continues to be an active member on LTIP. Notice of status
- 21.** The contributions required under subsection 20 (1) from an active member on LTIP who is receiving benefits under a long term income protection plan established under the *Public Service Act* shall be paid on behalf of the member by the Minister. Minister's payments re active member on LTIP
R.S.O. 1980, c. 418
- 22.—(1)** The required contribution for an active member on LTIP shall be paid to the person who was his or her employer on the date of disability. Collection re active member on LTIP
- (2) Payments under subsection (1) must be made on or before the fifteenth day of the month following the month in which each payment under the long term income protection agreement is made to the member. Idem
 - (3) Despite subsection (2), if an active member on LTIP makes an election under subsection 20 (2), the member shall pay a lump sum before the 30th day of November in the year for which the election is made equal to the amount of increase in the member's required contributions for the year that results from the election. Increased contributions
 - (4) Subject to subsection (5), an employer to whom a payment in respect of an active member on LTIP is to be made under this section shall, whether or not the payment is made, deliver to the administrator on or before the last day of each month in which the member's LTIP payment is required the amount of the member's required contribution. Transfer of contribution
 - (5) An employer who receives a payment under subsection (3) shall deliver it to the administrator or deposit it to the account of the pension fund not later than the 31st day of December in the year in which the employer receives it. Idem
 - (6) Interest is payable on payments in arrears made to the employer or by the employer from the date the payment is due to the date it is made, calculated at the standard interest rate plus 4 per cent. Interest payable

Cause of
action

(7) An employer may maintain an action for the recovery of an amount paid to the administrator under subsection (4) if the employer has not received the corresponding payment of required contributions for an active member on LTIP.

B. Employer Contributions

Liability for
contributions

23.—(1) Employer contributions in respect of an active member employed as described in subsection 2 (1) shall be paid by the Minister.

Idem

(2) Subsection (1) does not apply with respect to any contribution in relation to which the member is required under this pension plan to make the contribution that would otherwise be made by the Minister.

Idem

(3) Employer contributions in respect of an active member employed as described in subsection 2 (2) or section 7, 8 or 9 shall be paid by the employer of the member.

Idem

(4) Employer contributions in respect of an active member on LTIP shall be paid by the person making the employer contributions in respect of the member immediately before the date of disability.

Contributions
by the
Minister

24.—(1) The Minister shall contribute in each year an amount equal to the required contributions made during the year before the preceding year by or on behalf of those members for whom the Minister is required to make employer contributions.

Idem,
transitional

(2) The Minister shall contribute an amount equal to 4 per cent of the pensionable salaries of active members on LTIP for 1990 in addition to the amount required under subsection (1).

Due date
1987, c. 35

(3) The Minister's contribution is due on the 1st day of January in each year and not as required under the *Pension Benefits Act, 1987*.

Interest
payable

(4) Interest on the Minister's contribution is payable for the period beginning on the 1st day of June of the year that was two years before the date on which a payment is due and ending on the day the payment is made, calculated at the standard interest rate in effect on that 1st day of June.

Delivery

(5) The Minister shall deliver contributions to the administrator or deposit them to the account of the pension fund.

Order of
Lieutenant
Governor in
Council

(6) To reduce the time between the date of payment mentioned in subsection (3) and the payment of contributions by or on behalf of those members for whom the Minister is required to make employer contributions, the Lieutenant Governor in Council may, despite subsections (1) and (4), by Order require the Minister to make payments for such number of months in the preceding year as are specified in the Order in respect of contributions in those months by or on behalf of those members for whom the Minister is required to make employer contributions.

Idem

(7) An Order made under subsection (6) shall revise the period of time mentioned in subsection (1) in respect of which contributions by the Minister are computed so that it reflects the additional contributions required to be made by the Minister.

Idem

(8) An Order under subsection (6) shall adjust the date from which interest is to be calculated under subsection (4) to reflect the reduced time between the last month in which contributions are made by or on behalf of those members for whom the Minister is required to make employer contri-

butions and the month when the Minister pays an amount equal to those contributions.

25.—(1) An employer shall contribute in each month an amount equal to the required contributions made during the month by or on behalf of those members for whom the employer is required to make employer contributions.

Contributions by employers

(2) An employer's contribution is due on the last day of the month.

Due date

(3) Interest on an employer's contribution is payable from the date the payment is due to the date it is made, calculated at the standard interest rate plus 4 per cent.

Interest payable

(4) An employer shall deliver contributions to the administrator or deposit them to the account of the pension fund.

Delivery

C. Refund of Overpayments

26. The administrator shall refund contributions or other payments made in error or not permitted under the pension plan, together with interest, if the administrator received the contributions or other payments.

Refund error

27.—(1) An active member who works a greater number of days in a school year than are normally worked by a full-time employee in the occupational group in which the member is employed is entitled to a refund of contributions in accordance with this section.

Overpayments

(2) Despite section 79 of the *Pension Benefits Act, 1987*, the person required to make employer contributions in respect of a member described in subsection (1) is entitled to a refund of employer contributions in accordance with this section, if the employer contributions have been paid.

Idem
1987, c. 35

(3) The amount of the refund of contributions is calculated using the formula,

Amount of refund

$$A \times [1 - (B / C)]$$

in which,

“A” is the amount of the member's required contributions for employment in education during the school year,

“B” is the number of days normally worked in the school year by a full-time employee in the occupational group in which the member is employed, and

“C” is the number of days worked in the school year by the member for which the member's contributions have been made.

(4) Interest is payable on a refund of contributions from the last day of the school year until the refund is paid.

Interest payable

(5) A refund of contributions shall be paid as a lump sum.

Lump sum

28. Despite subsection 64 (4) of the *Pension Benefits Act, 1987*, a person described in subsection 46 (3) of the *Teachers' Superannuation Act, 1983* who became re-employed in education for less than twenty days

Refund, re-employed pensioners
1987, c. 35
1983, c. 84

between the 1st day of September, 1986 and the 31st day of August, 1989 is entitled to the refund described in that section.

PART IV

PAYMENTS UPON TERMINATION OF MEMBERSHIP

A. Vesting

Vesting of benefits **29.**—(1) Upon accumulating two years of credited service any part of which relates to employment on or after the 1st day of January, 1987, a member is entitled to a deferred pension in respect of credited service after that date.

Idem (2) A member is entitled to a deferred pension upon accumulating ten years of credited service.

Payment of deferred pension (3) A deferred pension shall be calculated and paid in accordance with Part V.

Limit (4) No person is entitled to more than one deferred pension in respect of the same period of employment.

Entitlement on termination of membership **30.**—(1) A member who is not entitled to a deferred pension is entitled upon ceasing to be employed in education to terminate his or her membership in the plan by taking a refund of contributions in accordance with sections 32 and 33.

Idem (2) A member who is entitled to a deferred pension is entitled upon ceasing to be employed in education to terminate his or her membership in the plan by taking a refund described in section 34 or by a transfer of funds and a refund of excess contributions, if applicable, made in accordance with section 35.

Limitation 1987, c. 35 (3) Despite an earlier time required under the *Pension Benefits Act, 1987* for paying refunds, a member is entitled to a refund of contributions ninety days after the date the member ceases to be employed in education, if no contributions are paid or required to be paid by or on behalf of the member.

Idem, transitional (4) Subsection (3) applies with necessary modifications with respect to a refund of contributions payable to a person who ceased to be employed in education before the 1st day of January, 1990.

Rights of former members **31.** A person who terminates his or her membership is not entitled to the rights and does not enjoy the privileges of a former member under the *Pension Benefits Act, 1987*.

B. Refunds and Transfers

Refund re post-1986 contributions **32.** A member who is not entitled to a deferred pension in respect of employment on or after the 1st day of January, 1987 is entitled to a refund of the member's contributions in respect of that employment together with interest thereon.

Refund re pre-1987 contributions **33.**—(1) A member who has less than ten years of credited service and who is not entitled to a deferred pension relating to employment before the 1st day of January, 1987 is entitled to a refund in the amount of the mem-

ber's contributions in respect of credited service before the 1st day of January, 1987 together with interest thereon.

(2) A member with less than ten years credited service who ceases to be employed in education in or after the year in which the member reaches sixty-five years of age is entitled to a refund equal to twice the amount of the member's contributions in respect of credited service before the 1st day of January, 1987 together with interest thereon.

Refund at or after sixty-five years of age

34.—(1) This section applies with respect to a member entitled to a deferred pension relating to employment before the 1st day of January, 1987.

Refund re pre-1987 deferred pension

(2) A member who ceases to be employed in education before reaching forty-five years of age is entitled to a refund in the amount of the member's contributions for credited service before the 1st day of January, 1987 together with interest thereon.

Before reaching forty-five years of age

(3) A member who ceases to be employed in education on or after reaching forty-five years of age is entitled to a refund in the amount of the member's contributions in respect of credited service before the 1st day of January, 1965 together with interest thereon.

On or after forty-five years of age

(4) A member who receives a refund of contributions under this section is not entitled to receive a deferred pension for the credited service to which the refund relates.

Reduction in deferred pension

35.—(1) A member entitled to a deferred pension relating to employment after the 31st day of December, 1986 is entitled to a refund, upon ceasing to be employed in education, of the amount by which the member's required contributions plus interest for the period after that date exceeds one half of the commuted value of the deferred pension for that period.

50 per cent rule

(2) Subsection (1) does not apply with respect to a member's contributions for which no corresponding employer contribution is required under section 24 or 25.

Exclusion

36. A member entitled to a deferred pension who ceases to be employed in education is entitled to a transfer of the commuted value of the deferred pension to another retirement savings arrangement in accordance with section 43 of the *Pension Benefits Act, 1987* and to a refund of excess contributions.

Transfer re deferred pension
1987, c. 35

37.—(1) An application for a refund of contributions or a transfer of funds shall be in a form provided by the administrator.

Application for refund, etc.

(2) A refund shall be paid in a lump sum.

Payment of refund

PART V

RETIREMENT PENSIONS

A. Entitlement to Pension

38.—(1) No member is entitled to more than one retirement pension under the pension plan in respect of the same period of credited service.

One pension only

(2) A member receiving a disability pension under the pension plan is not eligible to receive a retirement pension.

Idem

Retirement	(3) No member under the age of seventy-one is entitled to begin to receive a retirement pension while the member is employed in education.
Normal retirement date	39. The normal retirement date of a member is the first day of the month following the date on which the member reaches sixty-five years of age.
Entitlement to pension (2 year rule)	40.— (1) Subject to section 41, a member who has at least two years of credited service is entitled to receive a retirement pension for the member's lifetime calculated under subsection (3) and a payment calculated under subsection (4).
Commencement	(2) A retirement pension under this section begins as of the member's normal retirement date.
Amount of pension (2 year rule)	(3) The amount of the retirement pension, before adjustment for inflation, is calculated using the formula,

$$(A \times B) - C$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service relating to employment on or after the 1st day of January, 1987, and

"C" is the amount, if any, calculated under section 80 (CPP reduction).

Payment, pre-1987 service	(4) A member with less than ten years of credited service is entitled to a refund of contributions, if any, together with interest thereon relating to employment before the 1st day of January, 1987.
Entitlement to pension (10 year rule), transitional	41.— (1) A member who has at least ten years of credited service for employment in whole or in part before the 1st day of January, 1987 is entitled to receive a retirement pension for the member's lifetime calculated under subsection (3).
Commencement	(2) A retirement pension under this section begins as of the member's normal retirement date.
Amount of pension (10 year rule)	(3) The amount of the retirement pension, before adjustment for inflation, is calculated using the formula,

$$(A \times B) - C$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service, and

"C" is the amount, if any, calculated under section 80 (CPP reduction).

Entitlement to pension (special early retirement)	42.— (1) A member who has accumulated at least that number of years of credited service that, when added to the member's age upon termination of employment in education, totals ninety years is entitled to a retirement pension for the member's lifetime calculated under subsection (4).
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(2) A member who ceases to be employed in education after the 31st day of May, 1987 and before the 1st day of September, 1990 and who has thirty-five years of credited service is entitled to a retirement pension for the member's lifetime calculated under subsection (4). Idem (35 year rule)

(3) A retirement pension under this section begins as of the beginning of the month following the date the member ceases to be employed in education or, at the election of the member, of any month thereafter that is not later than the month after the month in which the member reaches seventy-one years of age. Commencement

(4) The amount of the retirement pension, before adjustment for inflation, is calculated using the formula, Amount of pension

$$(A \times B) - C$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service, and

"C" is the amount, if any, calculated under section 80 (CPP reduction).

43.—(1) A member entitled to a deferred pension under section 40 or 41 may elect to begin to receive a retirement pension on the first day of any month after the month that is ten years before the member's normal retirement date. Early retirement option

(2) The amount of the annual retirement pension, before adjustment for inflation, of a member who elects early retirement under subsection (1) shall be calculated using the formula, Amount of early retirement pension

$$[A \times B \times (1 - C)] - D$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is,

- (a) for a member entitled to a pension under section 41, the number of years of the member's credited service, and
- (b) for a member entitled to a pension under section 40, the number of years of the member's credited service for employment after the 31st day of December, 1986,

"C" is an amount equal to 0.05 times the lesser of,

- (c) the number of years by which the member's age is less than sixty-five on the date the pension is to begin, and
- (d) ninety minus the sum of,
 - (i) the number of years of the member's credited service determined under section 11, and
 - (ii) the member's age on the date the pension is to begin, and

"D" is the amount, if any, calculated under section 80 (CPP reduction).

Commuted
value

(3) Despite subsection (2), the commuted value of the retirement pension received on early retirement shall be not less than the commuted value of the retirement pension to which the member would be entitled on the normal retirement date based upon the member's credited service up to the early retirement date.

Postponed
pension
option

44.—(1) A member may elect to begin to receive his or her retirement pension in any month after the member's normal retirement date until the month in which the member reaches seventy-one years of age.

Amount of
late
retirement
pension

(2) The amount of the annual retirement pension, before adjustment for inflation, of a member who elects late retirement as described in subsection (1) is calculated using the formula,

$$(A \times B) - C$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service, and

"C" is the amount, if any, calculated under section 80 (CPP reduction).

Re-employed
pensioner

45.—(1) No retirement pension is payable to a re-employed pensioner while the re-employed pensioner is an active member.

Recalculation
of pension

(2) If a re-employed pensioner accumulates one year or more of credited service after becoming an active member, other than by means of a purchase of credited service or by the annualization of a partial year of credited service under section 11, and, if the re-employed pensioner makes an application to the administrator, the amount of the pensioner's retirement pension shall be recalculated in accordance with the terms of the pension plan in force on the date of the application.

Exception

(3) A re-employed pensioner who does not accumulate one year of credited service after becoming an active member is entitled when the re-employment ceases,

(a) to the resumption of the retirement pension to which the pensioner was entitled immediately before becoming re-employed; and

(b) to the refund of the member's required contributions, together with interest thereon, made during the re-employment.

Repayment

(4) A re-employed pensioner who receives pension payments to which the pensioner is not entitled shall repay the amount so received, together with interest thereon, before becoming entitled to further payments under the pension plan.

B. Payment of Retirement Pensions

Application
for
retirement
pension

46.—(1) A member who wishes to begin receiving a retirement pension shall apply to the administrator.

(2) A member who does not apply to begin receiving a retirement pension shall be deemed to do so on the day the member reaches seventy-one years of age. Deemed application

47.—(1) The administrator shall begin payment of a member's retirement pension not later than the later of, Payment of pension

(a) the month following the month in which the member ceases to be employed in education; or

(b) the month following the month in which application for the pension is complete.

(2) The administrator shall pay a retirement pension in monthly instalments on the last day of the month. Monthly instalments

(3) If the administrator does not begin paying a pension when required to do so under subsection (1), interest shall be paid on the payments beginning on the later of, Interest payable

(a) the end of the month in which the member becomes entitled to the pension; or

(b) the date three months after the month in which application for the pension is complete.

48.—(1) A member receiving a retirement pension shall notify the administrator in writing promptly upon becoming re-employed in education. Notice of re-employment

(2) A member who fails to comply with subsection (1) is not entitled to receive retirement pension payments for a period during which notice should have been given under that subsection. Failure to give notice

(3) A member who receives pension payments to which the member is not entitled shall repay the amount so received, together with interest thereon, before becoming entitled to further payments under the pension plan. Repayment of pension

PART VI

DISABILITY PENSIONS

A. Entitlement to Disability Pension

49.—(1) This section applies to a member with at least ten years of credited service who becomes disabled while employed in education and who, as a result of the disability, ceases before the normal retirement date to be employed in education. Entitlement to disability pension

(2) If the administrator finds that a member described in subsection (1) is incapable of further employment, the member is entitled to a full disability pension for the member's lifetime. Full disability pension

(3) If the administrator finds that a member described in subsection (1) is incapable of further employment in education, the member is entitled to a partial disability pension for the member's lifetime. Partial disability pension

(4) A member who has previously terminated his or her membership and who returns to membership and purchases credited service for previous employment in education is not eligible to receive a disability pension until the member accumulates two additional years of credited service. Eligibility

Idem (5) Subsection 11 (2) (partial year) does not apply for the purpose of determining a member's accumulation of the two additional years of credited service under subsection (4).

Effect of re-employment **50.**—(1) A member receiving a full disability pension who becomes employed ceases to be entitled to a full disability pension.

Idem (2) A member receiving a disability pension who becomes employed in education as a teacher ceases to be entitled to a disability pension.

Reduced partial disability pension (3) A member receiving a disability pension who becomes employed in education otherwise than as a teacher is entitled to receive a reduced partial disability pension.

Application (4) This section applies with respect to a member who is receiving a disability pension on or after the 1st day of January, 1990.

Amount of full disability pension **51.**—(1) The amount of the annual full disability pension, before adjustment for inflation, for a member is calculated using the formula,

$$(A \times B) - C$$

in which,

“A” is 2 per cent of the member's average salary,

“B” is the number of years of the member's credited service under the plan, and

“C” is the amount, if any, calculated under section 80 (CPP reduction).

Amount of partial disability pension (2) The amount of a partial disability pension, before adjustment for inflation, for a member is calculated using the formula,

$$[(A \times B)(1 - C)] - D$$

in which,

“A” and “B” have the same meaning as in the formula for calculating the amount of a full disability pension,

“C” is an amount equal to 0.025 times the lesser of,

(a) the number of years by which the member's age on the date the pension begins is less than the member's age at the normal retirement date, and

(b) ninety minus the sum of,

(i) the number of years of the member's credited service determined under section 11, and

(ii) the member's age on the date the pension begins, and

“D” is the amount, if any, calculated under section 80 (CPP reduction).

Limitation (3) The annual amount of the partial disability pension, before adjustment for inflation, shall not be less than 75 per cent of the full disability pension.

(4) The annual amount of a member's reduced partial disability pension, before adjustment for inflation, is calculated using the formula,

$$A - [(A + B) - C]$$

Amount of reduced partial disability pension

in which,

“A” is the amount of the member's disability pension immediately before the member begins the new employment in education,

“B” is the salary for the year from the member's new employment in education,

“C” is the annual salary of the member immediately before the member ceased, as a result of the disability, to be employed in education, increased in respect of each year after the person so ceased to be employed up to the year in which the member begins the new employment in education,

- (a) as if it were being adjusted for inflation in accordance with section 79, for periods beginning on or after the 1st day of January, 1990, and
- (b) in the same manner as a pension would be increased under the *Superannuation Adjustment Benefits Act*, for periods ending before the 1st day of January, 1990, and
- R.S.O. 1980, c. 490

in which the amount represented by “[(A + B) - C]” is the greater of,

- (c) zero, and
- (d) the amount otherwise determined in accordance with the definitions of “A”, “B” and “C”.

52.—(1) Subject to subsection (2), if a member becomes re-employed in education and ceases to receive a disability pension under the pension plan or a predecessor Act or begins to receive a reduced disability pension, the member is entitled upon ceasing the re-employment to the resumption of the original disability pension without adjustment of the amount of the pension.

Resumption of disability pension

(2) A member described in subsection (1) who completes the equivalent of two years of full-time employment in education after becoming re-employed and then ceases to be so employed shall make a fresh application for a pension, and the terms of the pension plan on the date the application is made shall apply with respect to the member's entitlement to a pension.

Idem

53.—(1) This section applies if a member receiving a partial disability pension or a reduced partial disability pension dies while the administrator is considering whether the member is entitled to a full disability pension based upon fresh medical evidence concerning the member's disability.

Change of disability status re survivor pension

(2) Having regard to the facts established at the date of the member's death, the administrator shall determine whether the member would have been entitled, immediately before the date of death, to a full disability pension.

Determination by the administrator

(3) For the purpose of calculating the amount of a survivor pension, child's pension or beneficiary's pension, if the administrator determines that the member would have been entitled to a full disability pension, the member shall be deemed to have been receiving it on the date of death.

Deemed receipt

B. Payment of Disability Pension

- Application for disability pension** **54.—**(1) A member shall apply for a disability pension within two years after the date when the member ceases, as a result of the disability, to be employed in education.
- Idem** (2) The administrator shall accept an application for a disability pension that is made after the time described in subsection (1) if the administrator is satisfied,
- (a) that the delay in making the application resulted from a delay in diagnosing the disability; or
 - (b) that the member was unable, because of the effects of the disability, to make the application within the time described in subsection (1).
- Proof of disability** (3) No application for a disability pension shall be considered by the administrator until the administrator has received,
- (a) the certificate of a legally qualified medical practitioner designated by the administrator, certifying that the applicant became mentally or physically disabled while employed in education and indicating the nature and degree of the disability; and
 - (b) a report of the medical referee of the administrator containing such recommendations as the medical referee considers proper with regard to the granting of a disability pension to the applicant.
- Disability pension, predecessor Acts** **55.—**(1) This section applies with respect to a person who ceased to be employed in education before the 1st day of January, 1990 as a result of a mental or physical incapacity and who did not apply for a disability allowance under a predecessor of this Act.
- Application** (2) Section 54 applies with necessary modifications to an application by a person described in subsection (1).
- Entitlement 1983, c. 84** (3) The person is entitled to a disability allowance determined in accordance with the *Teachers' Superannuation Act, 1983*.
- Idem** (4) Clause 17 (1) (d) or 18 (1) (d) of the *Teachers' Superannuation Act, 1983* does not apply if the administrator accepts an application under subsection 54 (2).
- Commencement of disability pension** **56.—**(1) Subject to subsection (2), a member's disability pension shall begin as of the first day of the month following the month in which the member ceases to be employed in education.
- Idem** (2) No disability pension shall begin as of a date earlier than one year before the date the administrator receives the completed application for the pension.
- Reduced partial disability pension** (3) A member's reduced partial disability pension shall begin as of the first day of the month following the month in which the member becomes re-employed.
- Monthly instalments** (4) The administrator shall pay a disability pension in monthly instalments.
- Due date** (5) Disability pension payments are due on the last day of the month.

(6) Interest shall be paid on overdue pension payments if the administrator does not begin paying a pension by the end of the month in which the member becomes entitled to receive it. Interest payable

57.—(1) The administrator may at any time require a member who is receiving a disability pension to furnish evidence, in such form as the administrator directs, of the member's mental or physical condition. Evidence of medical condition

(2) If the member fails to furnish evidence within a reasonable time that his or her condition continues to be of a nature that entitles the member to receive the disability pension, the administrator shall terminate payment of the pension. Failure to furnish evidence

(3) If the administrator terminates payment of a full disability pension, the member may request the administrator to review the decision to terminate payment. Review by administrator

(4) If the administrator is satisfied upon reviewing a decision to terminate payment that the member is entitled to a disability pension under section 49 or 50, the administrator shall pay the disability pension. Idem

(5) This section does not apply with respect to a member who has reached normal retirement age. Application

58.—(1) A member receiving a disability pension shall notify the administrator in writing promptly upon becoming employed or changing employment. Notice of re-employment

(2) A member who fails to comply with subsection (1) is not entitled to receive a disability pension payment during a period when notice should have been given under that subsection. Failure to give notice

(3) A member who receives pension payments to which the member is not entitled shall repay the amount so received, together with interest thereon, before becoming entitled to further payments under the pension plan. Repayment of pension

PART VII

BENEFITS UPON DEATH

A. Upon the Death of a Member not Entitled to a Pension

59. The personal representative of a member who dies without becoming entitled to a deferred pension is entitled to a refund of the member's contributions together with interest thereon. Refund of contributions

B. Upon the Death of a Member Entitled to a Deferred Pension

60.—(1) If a member who is entitled to a deferred pension or a disability pension dies before the first instalment of the pension is due, the person who is the spouse of the member on the date of death is entitled to receive, Pre-retirement (spousal) death benefit

(a) the benefit described in section 61 in respect of the member's employment, if any, before the 1st day of January, 1987; and

(b) the benefit described in section 62, in respect of the member's employment, if any, on or after the 1st day of January, 1987.

(2) Subsection (1) does not apply if the member and the spouse are living separate and apart on the date of death of the member. Application

Pre-1987 (spousal) death benefit	61. —(1) This section applies with respect to that portion of the death benefit that relates to a member's employment before the 1st day of January, 1987.
Survivor pension	(2) The spouse of a member with ten years or more credited service is entitled to the survivor pension described in subsection (3) for the lifetime of the spouse.
Pre-1987 survivor pension	(3) The amount of the survivor pension, before adjustment for inflation, shall be based upon the member's credited service for employment before the 1st day of January, 1987 and shall be one half of the amount of the pension, before adjustment for inflation, (a) that would have been paid to the member at the date of death, if the member was at least sixty-five years of age on the date of death; or (b) that would have been paid to the member as of the first day of the month following the month in which he or she would have reached sixty-five years of age, if the member was less than sixty-five years of age on the date of death.
Refund of contributions	(4) The spouse of a member with less than ten years of credited service is entitled to a refund of the member's contributions for employment before the 1st day of January, 1987 together with interest thereon.
Post-1986 (spousal) death benefit	62. —(1) This section applies with respect to that portion of the death benefit that relates to a member's employment on or after the 1st day of January, 1987.
Benefit	(2) The spouse of a member with two years or more credited service is entitled to the benefit described in subsection (4).
Refund of contributions	(3) The spouse of a member with less than two years of credited service is entitled to a refund of the member's contributions for employment on or after the 1st day of January, 1987 together with interest thereon.
Idem	(4) The benefit referred to in subsection (2) is, (a) a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for credited service for employment on or after the 1st day of January, 1987; or (b) an immediate or a deferred survivor pension for the lifetime of the spouse, the commuted value of which is at least equal to the commuted value of a pension for credited service for the member's employment on or after the 1st day of January, 1987, calculated as if the member had become entitled to a retirement pension on the date of death.
Election	(5) The spouse may elect the form of benefit to be paid under subsection (4) and a spouse who does not do so within twelve months after the death of the member shall be deemed to have elected to receive an immediate survivor pension.
Deferred survivor pension	(6) A spouse who elects to receive a deferred survivor pension may elect to begin to receive the pension at any time up to the month after the month in which the spouse reaches seventy-one years of age.
Pre- retirement child's pension	63. —(1) This section applies with respect to the dependent children of a member entitled to a deferred pension or a disability pension who died before the first instalment of the pension was due and,

- (a) who had a spouse who became entitled to a survivor pension who subsequently died; or
- (b) who did not have a spouse entitled to a survivor pension.

(2) Subject to subsection (3), each dependent child of a member is entitled upon the death of the spouse or the member, as the case may be, to receive a child's pension while the child remains a dependent child.

Entitlement to child's pension

(3) No child's pension is payable in respect of the credited service of a deceased member for which the spouse of the member received the lump sum payment described in clause 62 (4) (a).

Exception

(4) The amount of the child's pension, before adjustment for inflation, shall be one half of the amount of the pension, before adjustment for inflation,

Amount of child's pension

- (a) that would have been paid to the member at the date of death, if the member was at least sixty-five years of age on that date;
- (b) that would have been paid to the member as of the first day of the month following the month in which he or she would have reached sixty-five years of age, if the member was less than sixty-five years of age on the date of death.

(5) The child's pension shall be shared equally among the member's dependent children.

Idem

(6) The share of the child's pension of each of the children who ceases to be a dependent child accrues to the remaining dependent children, if any.

Share accrues to others

64.—(1) A beneficiary designated by a member entitled to a deferred pension or a disability pension is entitled to the benefit described in subsection (2),

Benefit to beneficiary

- (a) if the member dies before the first instalment of the pension is due; and
- (b) if, on the date of death, the member does not have a spouse or a dependent child entitled to a benefit payable on his or her death.

(2) The benefit is a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for credited service for employment on or after the 1st day of January, 1987.

Amount of benefit

65.—(1) The estate of a member entitled to a deferred pension or a disability pension who dies before the first instalment of the pension is due is entitled to the payments described in this section.

Benefit to estate

- (2) If no other person is entitled to a benefit on the death of the member, the estate is entitled to,
 - (a) a refund of the member's contributions for employment before the 1st day of January, 1987 together with interest thereon; and
 - (b) a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for credited service for employment on or after the 1st day of January, 1987.

Idem, no others entitled

(3) If another person is entitled to a benefit on the death of the member, the estate is entitled to a refund of the amount by which the member's

Residual entitlement

contributions together with interest thereon exceeds the amount paid to the other person together with interest thereon.

C. Upon the Death of a Pensioner

Survivor
pension,
spouse

66.—(1) If a member is receiving a pension on the date of death, the person who is the spouse of a member on the date the first instalment of the pension was due is entitled to the survivor pension described in subsection (3) for the spouse's lifetime.

Application

(2) Subsection (1) does not apply if the member and the spouse were living separate and apart on the date the first instalment of the member's pension was due.

Amount of
survivor
pension

(3) Subject to sections 67 and 68, the amount of the annual survivor pension, before adjustment for inflation, payable to the surviving spouse shall be not less than 50 per cent of the pension, before adjustment for inflation,

(a) that was being paid to the member at the date of death, if the member was at least sixty-five years of age on that date; or

(b) that would have been paid to the member as of the first day of the month next following the month in which he or she would have reached sixty-five years of age, if the member was less than sixty-five years of age on the date of death.

Spousal
election re
survivor
pension
1987, c. 35

67.—(1) In the absence of a joint waiver by a member and the member's spouse of the spouse's entitlement under subsection 45 (3) of the *Pension Benefits Act, 1987* (amount of survivor benefit), the amount of the survivor pension payable on the death of the member shall be not less than 60 per cent of the pension paid to the member during their joint lives.

Waiver void

(2) A waiver referred to in subsection (1) is void if it is delivered to the administrator more than twelve months before the date that the first instalment of the member's pension is due or after the date that the first instalment is due.

Adjustment
of member's
pension

(3) In the absence of a waiver referred to in subsection (1), the amount of the pension payable to the member shall be actuarially reduced to allow for payment of the increased survivor pension in accordance with subsection (1).

Application

(4) This section does not apply with respect to a member who, before the 1st day of January, 1988, began to receive a pension under a predecessor Act.

Increase of
survivor
pension

68.—(1) A member may direct the administrator to increase the amount of a survivor pension that may become payable under section 66 in respect of the member to an amount equal to 55, 65, 70 or 75 per cent of the member's pension that would be payable if the amount of the pension were calculated without regard to this section.

Time limit

(2) A direction must be given in writing and must be delivered to the administrator at least two years before the earlier of,

(a) the member's normal retirement date; or

(b) the beginning of the month in which the member's pension begins.

(3) The administrator shall act on a direction delivered after the deadline specified in subsection (2) and before the member applies for a retirement pension if the administrator is satisfied that the member is in good health having regard to the member's age.

Idem

(4) The amount of the pension payable to the member shall be actuarially reduced to allow for payment of the increased survivor pension in accordance with the direction.

Adjustment of member's pension

(5) The commuted value of pension paid to the member including the commuted value of the increased survivor benefit shall not be less than the commuted value of the pension, including survivor benefit, that would otherwise be payable.

Commuted value

(6) A member may revoke a direction given under this section by a written revocation delivered to the administrator before the member begins receiving a pension.

Revocation of direction

(7) A direction given under this section by a member is void if the member dies before beginning to receive a pension.

Direction void

69.—(1) In this section, “new spouse”, in relation to a member, means a person who becomes the spouse of the member after the member begins to receive a retirement or disability pension.

Survivor pension, new spouse

(2) A member receiving a retirement or disability pension who does not have a spouse eligible to receive a survivor pension under section 66 may, while receiving the pension, direct the administrator to provide a survivor pension to a new spouse.

Idem

(3) A direction must be given in writing and must be delivered to the administrator on or before the later of,

Time limit

(a) ninety days after the date on which the member becomes the spouse of the new spouse; or

(b) if immediately before the member becomes the spouse of the new spouse there is a child who would be entitled upon the death of the member to receive a child's pension under section 72, ninety days after the date on which the child ceases to be eligible to receive the child's pension.

(4) The administrator shall act on a direction delivered after the deadline specified in subsection (3) if the administrator is satisfied that the member is in good health having regard to the member's age.

Idem

(5) In giving the direction, a member receiving a retirement pension shall direct the administrator to pay a survivor pension in the amount of 50, 55, 60, 65, 70 or 75 per cent of the pension that would otherwise be payable on the first day of the month next following the month in which the member becomes the spouse of the new spouse.

Amount of survivor pension

(6) The amount of a retirement pension payable to the member shall be actuarially reduced to allow for payment of the survivor pension in accordance with the direction.

Adjustment of member's pension

(7) The actuarial reduction required by subsection (6) shall be based upon the ages of the member and of the spouse on the last day of the month in which the direction is delivered to the administrator.

Idem

Payment of
survivor
pension

(8) The administrator shall pay the survivor pension in accordance with the direction but not while there is a person who is eligible to receive a child's pension in respect of the member.

Survivor
pension,
predecessor
Acts

70.—(1) This section applies with respect to a member who, before the 1st day of September, 1984, ceased to be employed in education within the meaning of a predecessor of this Act and who became the spouse of a person after ceasing that employment.

Direction re
survivor
pension

(2) A member described in subsection (1) may direct the administrator to provide a survivor benefit for the member's spouse and section 69 applies with respect to the direction with necessary modifications.

Time limit

(3) A direction under this section shall be delivered to the administrator on or before the latest of,

- (a) the 31st day of March, 1990;
- (b) ninety days after the date on which the member becomes a spouse; or
- (c) if on the 1st day of January, 1990 there is a child who would be entitled upon the death of the member to receive a survivor allowance under a predecessor of this Act, ninety days after the date on which the child ceases to be eligible to receive the survivor allowance.

Idem

(4) The administrator shall act on a direction delivered after the deadline specified in subsection (3) if the administrator is satisfied that the member is in good health having regard to the member's age.

Deemed
direction

(5) A member described in subsection (1) who dies on or before the 31st day of March, 1990 without having given a direction under this section shall be deemed to have given it on that date and shall be deemed to have directed the administrator to pay a 50 per cent survivor pension.

Survivor
pension
(prior
inquiry)

71.—(1) This section applies with respect to a person who became the spouse of a member described in subsection 70 (1) after the member ceased to be employed in education within the meaning of a predecessor of this Act.

Idem

(2) This section does not apply unless the member has ceased to be a member before the 1st day of January, 1990 because he or she has died.

Survivor
pension

(3) A spouse described in subsection (1) is entitled to a survivor pension calculated from the date of a written inquiry respecting a survivor pension,

- (a) made to the Teachers' Superannuation Commission before the 1st day of January, 1990; or
- (b) made to the administrator on or after the 1st day of January, 1990.

Amount of
pension

(4) The amount of the survivor pension is 50 per cent of the amount of the member's retirement pension on the date of the member's death adjusted for inflation as if it were a pension for the period from the date of the member's death to the date the spouse becomes entitled to the survivor pension.

Child's
pension

72.—(1) This section applies with respect to the dependent children of a member who died while receiving a retirement or disability pension and,

- (a) who had a spouse who died after becoming entitled to a survivor pension; or

(b) who did not have a spouse entitled to a survivor pension.

(2) Each dependent child of a member, upon the death of the spouse or the member, as the case may be, is entitled to a child's pension while remaining a dependent child. Entitlement to child's pension

(3) The amount of the annual child's pension is the amount of the survivor pension to which a spouse of the member was or would have been entitled after the death of the member, shared equally among the dependent children. Amount of child's pension

(4) The share of the child's pension of each of the children who ceases to be a dependent child accrues to the remaining dependent children, if any. Share accrues to others

73.—(1) A beneficiary designated by a member is entitled to a beneficiary's pension upon the death of a member, Beneficiary's pension

(a) who was receiving a retirement or disability pension on the date of death; and

(b) who did not have a spouse entitled to a survivor pension or a child entitled to a child's pension on the date of death.

(2) A direction must be given in writing and must be delivered to the administrator at least two years before the earlier of, Time limit

(a) the member's normal retirement date; or

(b) the beginning of the month in which the member's pension begins.

(3) The administrator shall act on a direction delivered after the deadline specified in subsection (2) and before the member applies for a retirement pension if the administrator is satisfied that the member is in good health having regard to the member's age. Idem

(4) In giving the direction, the member shall direct the administrator to pay a beneficiary's pension in the amount of 50, 55, 60, 65, 70 or 75 per cent of the member's pension that would otherwise be payable on the date of the member's death if the amount of the pension were calculated without regard to this section. Amount of beneficiary's pension

(5) The amount of the pension payable to the member shall be actuarially reduced to allow for payment of the beneficiary's pension in accordance with the direction. Adjustment of member's pension

(6) A member may revoke a direction by a written revocation delivered to the administrator before the member begins to receive a pension. Revocation of direction

(7) A direction given under this section by a member is void if the member dies before beginning to receive a pension. Direction void

74. The estate of a member who was receiving a pension on the date of death is entitled to a refund of the amount by which the member's contributions together with interest thereon exceeds the sum of the amount paid to the member and the amount, if any, paid to every other person who was entitled to a benefit on the member's death, together with interest thereon. Benefit to estate

D. Payment of Death Benefits

Commence-
ment of
pension

75.—(1) A pension that is payable immediately on the death of a member who was not receiving a retirement or disability pension on the date of death shall begin as of the day after the day the member dies.

Idem

(2) A pension that is payable on the death of a member who was receiving a retirement or disability pension on the date of death shall begin as of the first day of the month after the month in which the member dies.

Payments to
estate

76.—(1) If the administrator is unable to locate a personal representative of the estate of a deceased member, the administrator may pay into court any payments that under the pension plan are required to be made to the estate.

Missing
beneficiary

1987, c. 35

(2) If the administrator is unable, after making reasonable inquiries, to locate an individual who is entitled to a death benefit under the pension plan or a beneficiary designated by the deceased member under the *Pension Benefits Act, 1987*, the administrator shall pay to the estate of the deceased member one year after the date of death the amount to which the estate is otherwise entitled when no other person is entitled to a benefit on the death of the member.

Missing
beneficiary
found

(3) If an individual entitled to a death benefit under the pension plan or a beneficiary designated by the deceased member under the *Pension Benefits Act, 1987* applies for the benefit after the administrator makes a payment under subsection (2), the administrator shall pay the individual the amount of the benefit to which the individual is entitled less the amount paid to the estate by the administrator.

Transitional

(4) This section applies with respect to a person with credited service under a predecessor of this Act who dies before the 1st day of January, 1990, as if that person were a deceased member of the pension plan.

Discharge

(5) The administrator is discharged on making a payment in accordance with this section.

Interpleader,
more than
one applicant
R.S.O. 1980,
c. 488

77.—(1) In this section, "court" has the same meaning as in Part V of the *Succession Law Reform Act*.

Court may
order

(2) If more than one person applies to the administrator for a benefit in respect of a deceased member, the court, on application by the administrator, by order may direct payment of the benefit or part thereof to one or more of the applicants and shall specify the proportion of the benefit that shall be paid to each of them.

Application
to court
R.S.O. 1980,
c. 488

(3) The administrator's application shall be made in the same manner as an application under Part V of the *Succession Law Reform Act*.

Application
of
R.S.O. 1980,
c. 488, s. 62

(4) Section 62 of the *Succession Law Reform Act* applies with necessary modifications in respect of the allocation of proportions of the benefit and, for the purpose, "dependant" means spouse, child or beneficiary of the deceased member.

PART VIII

BENEFITS AND PAYMENTS — GENERAL

A. Adjustments for Inflation

78.—(1) Every retirement pension, disability pension, survivor pension, child's pension and beneficiary's pension shall be adjusted for inflation in accordance with section 79. Inflation adjustment, pensions

(2) Every deferred pension payable under the pension plan shall be adjusted for inflation in accordance with section 79 for the period beginning at the end of the last year for which the member has credit under the plan and ending when the pension begins. Idem, deferred pensions

(3) No pension or deferred pension shall be adjusted under this section for inflation in respect of a period before the 1st day of January, 1990. Limitation

79.—(1) In the formulas in this section, Calculation of inflation adjustments

“A” is the carry forward determined for the immediately preceding year,

“B” is the basic ratio for the year,

“C” is the adjustment ratio for the year,

“D” is the basic ratio for the year after the last year for which the member for whose credit in the pension plan the pension in respect of which the formula is applied is payable has credit in the pension plan, and shall be calculated to a maximum of 1.080 or to a minimum of 1.000, and

“E” is the number of full months in the year that are after the month in the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan.

(2) In this section, Definitions

“accumulated adjustment ratio”, for a person's pension, means the product of the multiplication of all adjustment ratios for the years in the period commencing with the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan and ending with the year for which the accumulated adjustment ratio is being determined;

“adjustment ratio”, for a person's pension, means,

(a) for any year before the year 1976 and for the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan, 1.000,

(b) if the member for whose credit in the plan the pension is payable ceased to be employed in education in or after the year 1975, for the year after the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan, the ratio determined by the formula “[(D - 1.000) × E / 12] + 1.000”, and

- (c) for the later of the year 1976 and the second year after the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan and for any subsequent year, the ratio determined by the formula " $A + B$ " calculated to a maximum of 1.080 or to a minimum of 1.000;

"basic ratio", for a year, means the ratio expressed to three decimal places that the average for the Consumer Price Index over the last twelve months of the twenty-four-month period ending with the 30th day of September in the immediately preceding year bears to the average for the Consumer Price Index over the first twelve months of that period;

"carry forward", with respect to the pension of a person, means,

- (a) for any year before the year 1976, for the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan and for the year after that year, nil, and
- (b) for the later of the year 1976 and the second year following the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan and for any subsequent year, the positive or negative number determined by the formula " $A + B - C$ ";

R.S.C. 1985,
c. S-19 "Consumer Price Index" means the Consumer Price Index for Canada as published by Statistics Canada under the authority of the *Statistics Act* (Canada);

1983, c. 84 "member" includes a contributor within the meaning of the *Teachers' Superannuation Act, 1983* or a predecessor Act;

"pension" means a pension to which a person is entitled from the plan other than the adjustment for inflation provided by this section, and an allowance, annuity, deferred annuity or other periodic payments to which a person has become entitled under the *Teachers' Superannuation Act, 1983* or a predecessor Act;

"plan" includes the pension plan established under the *Teachers' Superannuation Act, 1983* and any predecessor Act.

Payment of
inflation
adjustment

(3) The annual amount of pension payable to a person from the pension fund shall, commencing with the year when payment of the pension is to commence and in each subsequent year that the pension continues to be payable, be adjusted for inflation by multiplying the annual amount of the pension by the accumulated adjustment ratio for the pension of the person for that year, and the amount by which the pension thus adjusted exceeds the annual amount of pension before the adjustment in each year shall be paid to the person entitled to receive the pension for which it is calculated at the same times, in the same manner and subject to the same terms and conditions as apply to the pension in respect of which it is paid.

Ratio not to
apply
R.S.O. 1980,
c. 490

(4) The ratio determined for the year 1990 under the *Superannuation Adjustment Benefits Act* does not apply to a pension to which this section applies.

Effect of re-
employment

(5) For the purpose of determining an accumulated adjustment ratio, a person's re-employment in education for less than twenty-one days after the person ceases to be employed in education and before the person begins to receive a pension shall not be considered in determining the year in which the person ceases to be employed in education.

B. CPP Reduction

80.—(1) If a member has contributed to the *Canada Pension Plan* or the *Quebec Pension Plan*, the amount of the member's retirement pension, full disability pension or partial disability pension shall be reduced by the amount calculated under subsection (3).

CPP
reduction for
pensions
R.S.C. 1985,
c. C-8
R.S.Q. 1977,
c. R-9

(2) A reduction of a member's pension shall apply with respect to pension payments due the month after the earlier of,

Commence-
ment,
retirement
pension

(a) the month in which the member reaches sixty-five years of age; or

(b) the month in which the first instalment of the member's disability pension, if any, under the *Canada Pension Plan* or the *Quebec Pension Plan* is due.

(3) The amount of the reduction in an annual pension is calculated using the formula,

Amount of
reduction

$$0.007 \times A \times B$$

in which,

“A” is the lesser of,

(a) the member's average salary, and

(b) the amount determined under subsection (4), and

“B” is the number of years of the member's credited service for employment on or after the 1st day of January, 1966 in respect of which the member made contributions under the *Canada Pension Plan* or the *Quebec Pension Plan*.

(4) The amount is the average of the Year's Maximum Pensionable Earnings for the year in which the member ceases to be employed in education and for each of the two preceding years.

Idem

C. Payment of Benefits

81.—(1) No benefit under the plan shall be paid before the administrator receives an application for it in the form provided by the administrator.

Application
for benefit

(2) An election available under the plan or a direction that may be given to the administrator shall be made or given in the form provided by the administrator.

Election or
direction

82. No member is entitled to payment of more than one pension under the plan during the same month or other payment period in respect of the member's credited service.

Multiple
pensions

83. The administrator may pay the commuted value of a pension, other than a disability pension, in accordance with section 51 of the *Pension Benefits Act*, 1987.

Commutation
of pensions
1987, c. 35

84.—(1) Despite section 66 of the *Pension Benefits Act*, 1987, a person receiving a pension under the pension plan or an allowance under a predecessor Act may direct the administrator to deduct and remit from the pension or allowance on behalf of the person,

Deductions
from
pensions
1987, c. 35

- (a) premiums payable under the Ontario Health Insurance Plan by the person;
- (b) premiums for life, medical, dental or health-related insurance payable by the person under a contract of group insurance approved by the administrator for the purpose of this section; and
- (c) membership fees payable to the Superannuated Teachers of Ontario Inc.

Conditions (2) The administrator may impose and require compliance with such conditions as the administrator considers appropriate before acting upon a direction.

Revocation of direction (3) A person making a direction may revoke it by written notice to the administrator.

Termination of pension **85.** Every pension terminates as of the end of the month in which the event that terminates the pension occurs.

D. Administration

Appeal of decision **86.**—(1) A person who is aggrieved by a decision of an employee of the administrator or a committee of the administrator respecting the person's entitlement to, or the amount of, a pension benefit may appeal the decision to the administrator and the administrator shall determine the appeal.

Idem (2) An appeal shall be made in accordance with the procedures established by the administrator.

Determination of commuted value **87.** The commuted value of a benefit shall not be less than the amount calculated in accordance with the *Recommendations for Minimum Transfer Values of Pensions* published from time to time by the Canadian Institute of Actuaries and shall be calculated using the rate of interest specified by, and such actuarial tables as may be adopted by, the administrator.

Calculation of interest **88.**—(1) Unless otherwise indicated, the standard interest rate attributable to a transaction is the rate that is the weighted average effective annual yield of the debentures held by the pension fund as at the 31st day of December in the year preceding the transaction and interest is compounded annually on the anniversary date of the transaction.

Idem, transitional 1983, c. 84 (2) Interest payable during 1990 shall be at the rate that is the weighted average effective annual yield of the debentures held by the Teachers' Superannuation Fund under the *Teachers' Superannuation Act, 1983* as at the 31st day of December, 1989.

Idem, transitional (3) Interest payable in respect of a period before the 31st day of December, 1989 shall be calculated up to that date at the applicable rate in effect under the *Teachers' Superannuation Act, 1983* and after that date it shall be calculated at the standard interest rate in effect on the 1st day of January, 1990.

Interest on contributions 1987, c. 35 (4) Interest credited under the pension plan on contributions shall be calculated in accordance with the *Pension Benefits Act, 1987* and credited to the member as at the 31st day of December in each year.

Interest on lump sums 1987, c. 35 (5) Interest is payable in accordance with the *Pension Benefits Act, 1987* on a lump sum payment of the commuted value of a benefit from the

effective date of the determination of the commuted value to the date the lump sum is paid.

89.—(1) At the request of the administrator, a member receiving a pension shall report to the administrator the number of days, if any, that the member is employed in education while receiving the pension. Report re employment in education

(2) If a member does not report within a reasonable time after the request, the administrator shall cease to pay the pension until the report is given. Failure to report

90.—(1) This section applies to a person who, before the 17th day of December, 1971, would have been entitled to more than one allowance under *The Teachers' Superannuation Act* or a predecessor thereof but for section 37 of that Act, if a refund of contributions was made in lieu of the payment of the second allowance. Prior refund re multiple pensions
R.S.O. 1970, c. 455

(2) A person who was not paid a second allowance solely because the person was not entitled to more than one allowance under the existing pension plan is entitled to receive a pension calculated under subsection (3) in addition to any pension to which the person is otherwise entitled under the plan or a predecessor Act. Entitlement to reinstatement

(3) The amount of the person's pension is calculated by adjusting for inflation for the period described in subsection (4) the amount of the pension to which the person would have been entitled immediately before payment of the refund with respect to that pension. Amount of pension

(4) An inflation adjustment of the amount described in subsection (3) shall be made for the period ending on the date the person becomes entitled to the pension under this section and beginning on the date that is the later of, Inflation adjustment

(a) the 1st day of January, 1976; or

(b) the date of payment of the refund of contributions in respect of the second allowance.

(5) Payment of a pension under this section begins as of the date the person applies to the administrator. Payment pension

(6) No amount is payable under this section in respect of a period before the 1st day of January, 1990. Idem

PART IX

PURCHASE OF CREDIT FOR SERVICE

A. General

91. The purchase of credited service by a member whose completed application is delivered to the administrator on or after the 1st day of January, 1992 shall be made in accordance with this Part. Purchases, general

92.—(1) The purchase of credited service by a member who delivers a completed application to the administrator before the 1st day of January, 1992 shall be made in accordance with sections 9, 10, 36, 45 and 48 of the *Teachers' Superannuation Act*, 1983 and with sections 7 to 14 of Ontario Regulation 423/84 as those sections read on the 31st day of December, 1989. Purchases, transitional
1983, c. 84

Idem	(2) The <i>Teachers' Superannuation Act, 1983</i> as it reads on the 31st day of December, 1989 continues to apply for the purpose of determining a purchase of credited service under subsection (1).
Transitional	(3) Sections 94, 95 and 98 apply with respect to a member's application before the 1st day of January, 1992 in the circumstances described in those sections.
End of transitional period	(4) A person is not eligible after the 31st day of December, 1994 to make or complete a purchase of credited service to which a predecessor Act applies.
Interest rate	(5) For the purpose of a purchase of credited service described in subsection (1) for a period on or after the 1st day of January, 1990, references to the applicable rate of interest in Ontario Regulation 423/84 shall be read as if they were references to the standard interest rate.
Idem	(6) Subsection 88 (3) (interest on contribution) does not apply with respect to a purchase of credited service described in subsection (1) for a period before the 1st day of January, 1990.

B. For Employment in Education

Absences and breaks in service	<p>93.—(1) In this section,</p> <p>“absence” means a leave of absence, with or without pay, to which a member's employer consents;</p> <p>“break in service” means a period when a member is not employed in education or is absent from employment without the employer's consent.</p>
Purchase re break in service	<p>(2) An active member may purchase credited service for a break in service,</p> <ul style="list-style-type: none"> (a) taken for personal or health reasons approved by the administrator; (b) taken upon the pregnancy of the member, for the birth or adoption of the member's child or for the purpose of caring for the member's child under seven years of age; or (c) taken for the purpose of serving as a member of the Legislative Assembly of Ontario, of the House of Commons of Canada or of the council of a municipality or local board within the meaning of section 1 of the <i>Municipal Affairs Act</i>.
R.S.O. 1980, c. 303 Restriction	<p>(3) An active member may purchase credited service under this section,</p> <ul style="list-style-type: none"> (a) if the member was an active member employed in education for a period equal to one school year of full-time employment before beginning the first such absence or break in service; and (b) if the member completes seventy days of credited service at any time after the member returns from the latest absence or break in service for which credited service is being purchased.
Purchase re absence	(4) An active member may purchase credited service for all or part of an absence.
Idem	(5) No member may purchase credited service for an absence for the purpose of service in political office if the member is contributing to or is entitled to a pension under another registered pension plan other than the <i>Canada Pension Plan</i> or the <i>Quebec Pension Plan</i> in respect of the service.
R.S.C. 1985, c. C-8 R.S.Q. 1977, c. R-9	

(6) An active member who elects to purchase credited service on or before the first anniversary after returning to active membership shall contribute, Amount of contribution

(a) an amount not greater than the sum of the required contributions the member would have made if the member were not absent, based upon the pensionable salary that the member's employer advises the administrator that the member would have earned; and

(b) interest thereon from the date each contribution would have been made and ending on the day it is paid.

(7) A contribution under subsection (6) shall be paid as a lump sum before the third anniversary of the member's return to active membership. Due date

(8) A member who elects to purchase credited service after the first anniversary of the member's return to active membership or who fails to make a payment before the due date under subsection (7) shall contribute a lump sum equal to the actuarial cost of the pension improvement at the date of the purchase. Amount of contribution, delayed election

(9) A member may make contributions during an absence or break in service but the member only becomes entitled to credited service in respect of those contributions upon complying with clause (3) (b). Advance payments

(10) A member may make a contribution before completing seventy days of credited service after returning to active membership but the member only becomes entitled to credited service in respect of the contribution upon complying with clause (3) (b). Idem

(11) A member who makes contributions during an absence or break in service is entitled to a refund of those contributions at any time before completing the purchase of credited service or complying with clause (3) (b). Idem

(12) A member who makes a contribution before completing seventy days of credited service after returning to active membership is entitled to a refund of the contribution at any time before complying with clause (3) (b). Refund

(13) No member may purchase more than seven years of credited service under this section. Limit on purchase

(14) Subsection (13) does not apply with respect to an absence or a break in service taken upon the pregnancy of the member, for the birth or adoption of the member's child or for the purpose of caring for the member's child under seven years of age but no member may purchase more than two years of credited service in respect of one child or, if more than one child is born or adopted at once, in respect of one such birth or adoption. Idem

(15) A member is not eligible to purchase credited service under this section while receiving a pension. Deadline for purchase

(16) A lump sum payment under this section may consist of, Lump sum payments

(a) a partial payment by means of a transfer permitted under the *Income Tax Act* (Canada); and R.S.C. 1952, c. 148

(b) a second payment of the balance of the amount required to pay for the credited service being purchased by the lump sum.

(17) Contributions made under this section shall be considered to be required contributions for the purpose of sections 24 and 25. Status of contributions

Absence during a school year	<p>94.—(1) An active member may purchase credited service for days that the member is absent from the member's employment if,</p> <ul style="list-style-type: none"> (a) the member is absent for the purpose of observing a religious holiday that is not observed by the employer; (b) the employer approves the absence; and (c) the member has accumulated at least one year of credited service before the absence.
Amount of contribution	(2) The member shall contribute the amount of the member's contribution for each day of absence plus the amount of the corresponding employer's contribution.
Interest payable	(3) The member shall pay interest, calculated at the standard rate, on any contribution that is delivered to the administrator more than one month after the end of the absence.
Limitation	(4) The member may purchase credited service for an absence described in subsection (1) only during the school year in which it occurs.
Absence re strike or lockout	95.—(1) An active member may contribute for days that the member is absent from employment in education for the purpose of participating in a legal strike or because of a lockout.
Amount of contribution	(2) The member shall contribute the amount of the member's required contribution for each day of absence plus the amount of the corresponding employer's contribution.
Interest payable	(3) The member shall pay interest, calculated at the standard rate, on any contribution delivered to the administrator more than one month after the end of the absence.
For former membership	96.—(1) This section applies with respect to an active member who previously received a refund of required contributions under the pension plan.
Eligibility	(2) No member may purchase credited service under this section until the member has accumulated, through employment in education, seventy days of credited service in one school year after returning to active membership.
Election within one year	(3) An active member who elects to purchase credited service on or before the later of the first anniversary of the member's return to active membership and the 1st day of January, 1994 shall contribute the amount previously refunded together with interest thereon from the date the refund was made to the first day of the month in which the contribution is paid, calculated at the standard interest rate in effect on the date the refund was made.
Limit	(4) No member may purchase more days of credited service under subsection (3) than the number of days in respect of which the member received the refund.
Due date	(5) A contribution under subsection (3) shall be paid as a lump sum before the third anniversary of the member's return to active membership.
Required contribution	(6) A contribution under subsection (3) shall be considered to be a required contribution.
Election after one year	(7) A member who elects to purchase credited service after the deadline referred to in subsection (3) or who fails to make the payment before

the deadline in subsection (5) shall contribute a lump sum equal to the actuarial cost of the pension improvement on the date of the purchase.

97.—(1) An active member may purchase credited service for a period of teaching or supervisory service outside Ontario if, before the service begins,

Approved service outside Ontario

- (a) the member is an active member; and
- (b) the Minister approves the service.

(2) No member may purchase credited service under this section if the member is entitled to a pension under another registered pension plan, other than the *Canada Pension Plan* or the *Quebec Pension Plan*, in respect of the service.

Idem
R.S.C. 1985, c. C-8
R.S.Q. 1977, c. R-9

(3) No member may purchase more than fifteen years of credited service under this section.

Limit

(4) The member shall contribute an amount equal to the actuarial cost of the pension improvement on the date of the purchase.

Amount of contribution

98.—(1) This section applies to an active member,

- (a) who is employed in an organization designated under the *Teachers' Superannuation Act, 1983* or in a school within the meaning of section 1 of the *Education Act*;
- (b) who was employed before the 1st day of September, 1986 in a private school designated under a predecessor of this Act;
- (c) who was employed on the 1st day of September, 1986 and for at least twenty days during the school year beginning on that date in an organization designated under the *Teachers' Superannuation Act, 1983* or in a school within the meaning of section 1 of the *Education Act*; and
- (d) who elected before the 1st day of September, 1986 to be excluded from the benefits and obligations of the predecessor Act.

Transitional re designated private schools
1983, c. 84
R.S.O. 1980, c. 129

1983, c. 84

(2) An active member may purchase credited service in accordance with subsections 13 (4), (6) and (7) of Ontario Regulation 423/84 as they read on the 31st day of December, 1989, with necessary modifications, for past teaching service in a private school designated under a predecessor of this Act.

Purchase

(3) No member is entitled to apply to purchase credited service under this section after the 31st day of December, 1991.

Idem

C. For other Employment

99.—(1) An active member may purchase credited service for active service and for special war service.

For active or special war service

(2) Sections 11, 11b and 13 of Ontario Regulation 423/84 as they read on the 31st day of December, 1989 apply with necessary modifications with respect to a purchase for credit under this section.

Idem

100.—(1) A person may purchase credited service for his or her employment before the 1st day of September, 1957 for employment for fewer than twenty hours per week teaching music, art and crafts, physical

For teaching special subjects

and health education, home economics, industrial arts and crafts or another special subject.

Idem (2) Sections 11a and 11b of Ontario Regulation 423/84 as they read on the 31st day of December, 1989 apply with necessary modifications with respect to a purchase for credit under this section.

For foreign service as an educator **101.**—(1) An active member may purchase credited service for employment as a provider of teaching or supervisory services,

(a) if the employment is performed in a jurisdiction other than Ontario or in a school maintained by the Government of Canada for children of members of the Armed Forces, for Canada's aboriginal peoples or for inmates of penal institutions;

(b) if the administrator considers that the employment is similar to employment in education; and

(c) if the member was not a member of the pension plan before the time of employment.

Eligibility (2) No member may purchase credited service under this section if the member is entitled to a pension under another pension plan, other than the *Canada Pension Plan* or the *Quebec Pension Plan*, in respect of the employment.

R.S.C. 1985,

c. C-8

R.S.Q. 1977,

c. R-9

Limit

(3) No member may purchase more than fifteen years of credited service under this section.

Amount of contribution

(4) The member shall contribute an amount equal to the actuarial cost of the pension improvement on the date of the purchase.

For other employment

R.S.C. 1952,

c. 148

102.—(1) An active member may purchase credited service for employment not otherwise described in this Part if the member participated in a pension plan registered under the *Income Tax Act* (Canada) in respect of the employment and if, after making the purchase, the member will not be entitled to receive a pension benefit under that plan.

Amount of contribution

(2) The member shall contribute a lump sum equal to the actuarial cost of the pension improvement on the date of the purchase.

D. Reciprocal Agreements

Reciprocal agreements

103.—(1) The administrator may enter into an agreement with the authorized representative of another pension plan respecting the terms upon which persons may transfer benefits and contributions between that plan and the pension plan.

Idem

(2) A reciprocal agreement must provide that a person transferring benefits and contributions to the pension plan acquires a benefit under the plan based upon the actuarial cost of the benefit on the date of the transfer.

Reciprocal agreements, transitional
1983, c. 84

104.—(1) Subject to subsection (2), reciprocal agreements entered into before the 1st day of January, 1990 by the Teachers' Superannuation Commission under section 49 of the *Teachers' Superannuation Act, 1983* are continued and expire on the 31st day of December, 1996.

Idem

(2) Reciprocal agreements referred to in subsection (1) do not expire on the 31st day of December, 1996 if, before that date, the reciprocal

agreement is amended to include a term described in subsection 103 (2) or if the agreement includes such a term.

E. Administration

105. An application to purchase credited service shall be made in a form provided by the administrator and shall be delivered to the administrator.

Application for purchase

106. A purchase of credited service is effective on the day that is the later of,

Effective date of purchase

- (a) the day the contribution in relation to the purchase is made; or
- (b) the day the member completes the qualifying period of re-employment required for eligibility to make the purchase.

107. A member who is entitled to purchase credited service for a period of employment, break in service or an absence may purchase credited service for a part of the employment, break or absence.

Purchase of partial credit

108.—(1) A person entitled to a death benefit in respect of a member who dies after applying for but before completing a purchase of credited service under this Part may make the contribution on behalf of the deceased member.

Contribution by spouse, etc.

(2) A person referred to in subsection (1) ceases to be entitled to make the contribution when a person receives payment of any death benefit in respect of the member.

Idem

PART X

ADMINISTRATION OF THE PLAN

A. General

109. The administrator may extend any time limit under the pension plan before or after the expiration of the time if the administrator is satisfied that there are reasonable grounds for the extension, and may give such directions as the administrator considers appropriate consequent upon the extension.

Extension of time

110.—(1) The administrator shall provide to each member of the pension plan the information and documents required under this Act or any other Act.

Provision of information

(2) A member, a person who applies for, or receives, a pension, refund or other payment from the pension fund, a board of education or an employer of a member shall provide the administrator, upon request, with such information as the administrator may require to administer the pension plan.

Idem, to administrator

(3) The administrator shall provide within a reasonable time to a member, upon written request, all information relating to the member's contributions and entitlements under the pension plan.

Idem, to members

111. The fiscal year of the pension plan is the twelve-month period that begins on the 1st day of January.

Fiscal year

Actuarial
calculations

112. Actuarial calculations and determinations required under the pension plan shall be made using such actuarial assumptions, principles and methods as may be required or adopted by the administrator.

B. Pension Fund

Payments
from pension
fund

113. A payment required under the pension plan must be paid from the pension fund.

Requirement
to invest

114. Moneys in the pension fund that are not required to be paid out must be invested to meet the obligations of the pension plan.

PART XI

DESIGNATION OF PRIVATE SCHOOLS AND ORGANIZATIONS

Private
schools

115.—(1) The Lieutenant Governor in Council by order may designate a school, college, academy or other educational institution as a designated private school for the purposes of the pension plan,

- (a) if it gives instruction equivalent to that given in elementary or secondary schools in Ontario;
- (b) if it is not supported in any way by school taxes or by provincial or municipal grants; and
- (c) if it meets the criteria set out in subsection (3).

Organizations

(2) The Lieutenant Governor in Council by order may designate an organization as a designated organization for the purpose of the pension plan,

- (a) if it provides services related to elementary or secondary education; and
- (b) if it meets the criteria set out in subsection (3).

Criteria

(3) The school, college, academy or other educational institution or the organization,

- (a) must not be operated for profit or gain and any profits must be used to carry out its objects; and
- (b) by its governing body must undertake in writing to make the reports described in subsection (5), to pay the amounts described in subsection (6), and to perform all administrative functions required of an employer for the purposes of the pension plan.

Effective
date of
designation

(4) A designation comes into force on the 1st day of September next following the designation.

Reports

(5) The administrator may require a designated private school or designated organization to make annual reports for the purpose of the administration of this Act and the pension plan and to supply such information as to its constitution, operations, teaching staff and otherwise as the administrator may require.

Payments
under the
plan

(6) A designated private school or designated organization shall, in accordance with the pension plan, make the employer contributions and col-

lect and remit the contributions by its employees who become active members of the pension plan.

116.—(1) Upon the recommendation of the Minister, the Lieutenant Governor in Council by order may terminate the designation of a designated private school or a designated organization. Termination of designation

(2) The Minister may recommend the termination of a designation, Grounds

(a) if the designated private school or designated organization, by its governing body, has requested the termination of the designation;

(b) if the designated private school or designated organization is not complying with its undertakings; or

(c) if there is a change in the objects or mode of carrying out the objects of the designated private school or designated organization.

(3) The Minister shall give notice of the proposed recommendation to the governing body and to the employees of the designated private school or designated organization who are active members of the pension plan. Notice and submissions

(4) An order by the Lieutenant Governor in Council terminating a designation is effective on the 31st day of August following the date of the order. Effective date

(5) Upon the termination of a designation, the employees of the private school or the organization cease to be eligible to be active members of the pension plan. Effect of termination of designation

117.—(1) The Lieutenant Governor in Council by order may designate the capacity in which a person must be employed at a private school or organization in order to be eligible to become an active member in the pension plan. Idem

(2) An order terminating a designation is effective on the 31st day of August next following the date of the termination of designation. Effective date

118. The designation of a designated private school, designated organization and a designated capacity under the *Teachers' Superannuation Act, 1983* that is in effect on the 31st day of December, 1989 shall have effect as a designation made under this Part. Designations, transitional 1983, c. 84

SCHEDULE 2

TRANSITIONAL VALUATION OF THE PENSION PLAN

1.—(1) In this section and in sections 2 and 3 and subsection 4 (3), “actuarial gain” and “actuarial loss” mean, respectively, the sum, if positive, or the sum, if negative, of, Initial unfunded liability

(a) the gain to the pension plan during the period since the review date of the immediately preceding going concern valuation resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based,

(b) the amount by which the going concern liabilities decrease as a result of an amendment to the plan, and

- (c) the amount by which the going concern liabilities decrease or the going concern assets increase as a result of a change in actuarial methods or assumptions upon which the current going concern valuation is based, as of the review date for a going concern valuation,

but clause (a), (b) or (c) or any combination thereof shall be counted as a negative in the calculation of the sum if,

- (d) the experience of the plan results in a loss rather than a gain,

- (e) an amendment increases the going concern liabilities, or

- (f) a change in actuarial methods or assumptions results in an increase in going concern liabilities or a decrease in going concern assets, as the case may be;

“going concern assets” means the value of the assets of the pension plan, including accrued and receivable income and the present value of future contributions and investment income, determined on the basis of a going concern valuation;

“going concern liabilities” means the present value of the expenses of the pension plan and the accrued and unaccrued benefits of the plan determined on the basis of a going concern valuation;

“going concern unfunded actuarial liability” means the excess of going concern liabilities over going concern assets;

“going concern valuation” means a valuation of assets and liabilities of the pension plan using methods and actuarial assumptions considered by the actuary who valued the plan to be in accordance with generally accepted actuarial principles and practices for the valuation of a continuing pension plan;

“initial valuation” means the going concern valuation of the pension plan as at the 1st day of January, 1990 required by section 3;

“past service unfunded actuarial liability” means the amount of going concern unfunded actuarial liability that results from the provision of benefits with respect to prior employment for which no benefit was provided at the time of the employment or from an amendment to the pension plan that provides benefits for employment prior to the date of the amendment if the employment had not previously been recognized for purposes of the provision of pension benefits;

1987, c. 35 “review date” means the last date of the period under review in a report required under the *Pension Benefits Act*, 1987;

“solvency assets” means the sum determined in accordance with subsections (2) and (3) of,

- (a) the market value of investments held by the pension plan or a value related to the market value by means of an averaging method that stabilizes short-term fluctuations of the market values over a period of not more than five years, plus any cash balances and accrued or receivable income items,

- (b) the present value of any special payments required to liquidate any past service unfunded actuarial liability established on or after the 1st day of January, 1988,

- (c) the present value of any special payments other than those referred to in clause (b) established on or after the 1st day of January, 1988 that are scheduled for payment within five years after the review date, and
- (d) the present value of future special payments resulting from the initial valuation;

"solvency deficiency" means the excess of the solvency liabilities over the solvency assets;

"solvency gain" means the sum, if positive, of,

- (a) the gain to the pension plan during the period since the review date of the immediately preceding valuation of solvency assets and solvency liabilities resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based, and
- (b) the amount by which the solvency liabilities decrease or the solvency assets increase during the period since the review date of the immediately preceding valuation of solvency assets and solvency liabilities as a result of a change in the actuarial methods or assumptions upon which the current valuation of solvency assets and solvency liabilities is based,

but either of clause (a) or (b) shall be counted as a negative in the calculation of the sum if the experience of the plan results in a loss rather than a gain or if a change in actuarial methods or assumptions results in an increase in solvency liabilities or a decrease in solvency assets, as the case may be;

"solvency liabilities" means an amount that is not less than the liabilities of the pension plan determined as if the plan had been wound up, taking into account liabilities for the adjustment for inflation under the plan and the requirements of section 75 of the *Pension Benefits Act, 1987*. 1987, c. 35

(2) The present values referred to in clauses (b), (c) and (d) of the definition of "solvency assets" in subsection (1) shall be determined on the basis of the assumed interest rate used in determining whether there is a solvency deficiency. Present values re solvency assets

(3) In calculating the solvency assets, if there is no market value for an investment of the pension plan and the investment is issued or guaranteed by a government, the book value of the investment may be used instead of market value. If no market value

(4) This section and sections 2, 3 and 4 prevail over any conflicting provisions of the *Pension Benefits Act, 1987* or of a regulation made under that Act. Conflicting provisions 1987, c. 35

2.—(1) For each month in the period commencing with the 1st day of January, 1990 and ending with the last day of the month in which the initial valuation is approved by the Pension Commission of Ontario, the Treasurer shall pay to the pension fund from the Consolidated Revenue Fund the amount shown for that month in the Table to this section. Interim payments of unfunded liability

(2) The Treasurer may, with the appropriate adjustment for interest, at any time prepay one or more of the outstanding payments shown in the Table. Prepayment

Application
of interim
payments

(3) Payments made under subsection (1) or (2) shall be credited against any special payments that are to be made in the same period to liquidate a going concern unfunded actuarial liability disclosed by the initial valuation, and any amount by which the payments made under those subsections are less than the special payments for that period as a result of the initial valuation shall be paid by the Treasurer to the pension fund with the appropriate adjustment for interest from the Consolidated Revenue Fund within fifteen months following the month when the initial valuation is approved by the Pension Commission of Ontario.

Table

Interim Payments of Unfunded Liability

<i>Item</i>	<i>Date of Payment</i>	<i>Amount of Payment</i>
1.	January 1, 1990	\$15,224,000
2.	February 1, 1990	15,292,000
3.	March 1, 1990	15,360,000
4.	April 1, 1990	15,429,000
5.	May 1, 1990	15,498,000
6.	June 1, 1990	15,567,000
7.	July 1, 1990	15,637,000
8.	August 1, 1990	15,707,000
9.	September 1, 1990	15,777,000
10.	October 1, 1990	15,848,000
11.	November 1, 1990	15,919,000
12.	December 1, 1990	15,990,000
13.	January 1, 1991	16,061,000
14.	February 1, 1991	16,133,000
15.	March 1, 1991	16,205,000
16.	April 1, 1991	16,278,000
17.	May 1, 1991	16,350,000
18.	June 1, 1991	16,424,000
19.	July 1, 1991	16,497,000
20.	August 1, 1991	16,571,000
21.	September 1, 1991	16,645,000
22.	October 1, 1991	16,719,000
23.	November 1, 1991	16,794,000
24.	December 1, 1991	16,869,000
25.	January 1, 1992	16,945,000
26.	February 1, 1992	17,020,000
27.	March 1, 1992	17,096,000
28.	April 1, 1992	17,173,000
29.	May 1, 1992	17,250,000
30.	June 1, 1992	17,327,000
31.	July 1, 1992	17,404,000
32.	August 1, 1992	17,482,000
33.	September 1, 1992	17,560,000
34.	October 1, 1992	17,639,000
35.	November 1, 1992	17,718,000
36.	December 1, 1992	17,797,000

Initial
valuation

3.—(1) As soon as practicable after the 31st day of December, 1989, the Board shall cause to be prepared a going concern valuation of the pension plan as at the 1st day of January, 1990, and the valuation shall include the adjustment of pensions for inflation under the plan.

Idem

(2) The initial valuation shall,

- (a) comply with this section and section 4;
- (b) be delivered by the actuary to the Board and to the Minister and the Treasurer, and shall be filed with the Pension Commission of Ontario by the Board only after the Minister and the Treasurer have approved in writing the initial valuation; and
- (c) for all purposes of the pension plan, determine the going concern unfunded actuarial liability or surplus of the plan as at the 1st day of January, 1990.
- (3) Any going concern unfunded actuarial liability disclosed by the initial valuation shall be liquidated by a series of special payments from the Consolidated Revenue Fund to be made over the forty years commencing on the 1st day of January, 1990. Liability liquidated
- (4) Each special payment mentioned in subsection (3) shall be calculated as a constant percentage of the projected future earnings from employment used to calculate pension benefits during the forty years commencing on the 1st day of January, 1990 of all persons who are members of the pension plan on that date and of those who are expected to join the plan during those forty years. Calculation of special payments
- (5) The present value, as at the 1st day of January, 1990, of the full series of special payments shall equal the amount of the going concern unfunded actuarial liability to be liquidated. Present value of special payments
- (6) The actuary shall prepare and submit with the initial valuation a schedule showing the dollar amount of each special payment in the first six years of the series and the formula by which the dollar amount of the remaining special payments in the series is determined. Schedule of payments
- (7) The Treasurer may, at any time, prepay a part or all of any outstanding special payments or may make additional payments to the pension fund to be applied, with appropriate adjustments for interest, as the Treasurer shall direct to reduce the going concern unfunded actuarial liability disclosed by the initial valuation, and every such payment may be paid out of the Consolidated Revenue Fund. Prepayments and additional payments
- (8) Subject to subsection (4), Consistent assumptions
- (a) the projected future earnings from employment used to calculate pension benefits shall be determined using actuarial assumptions consistent with those made in the initial valuation;
- (b) the present value of the series of special payments shall be determined using the interest rate used in the initial valuation; and
- (c) all other actuarial assumptions made in the determination of the series of special payments shall be, so far as possible, consistent with actuarial assumptions made in the initial valuation.
- 4.—(1) A going concern valuation of the pension plan made after the initial valuation shall include the value of the outstanding special payments calculated under section 3 that remain to be made to liquidate the going concern unfunded actuarial liability disclosed by the initial valuation, and the actuary shall prepare and submit with the valuation a schedule showing the amount, determined from the formula mentioned in subsection 3 (6), of each remaining special payment for the next six years or for the period of time for which special payments remain to be made, whichever is shorter. Subsequent valuations

Application
of actuarial
gain

(2) An actuarial gain disclosed by a going concern valuation made after the initial valuation shall be applied as prescribed by regulation.

Special
payments as
solvency
assets

(3) For the purpose of determining a solvency gain or solvency deficiency under the pension plan, solvency assets include the present value of future special payments required under section 3.

When special
payments
cease

(4) When the special payments made as a result of the initial valuation and the prepayments and additional payments made under subsection 3 (7) have liquidated the going concern unfunded actuarial liability disclosed by the initial valuation, no further payments shall be made, notwithstanding that the period of forty years used in the initial valuation has not expired.

Bill 66

An Act to revise the Teachers' Superannuation Act, 1983 and to make related amendments to the Teaching Profession Act

The Hon. S. Conway
Minister of Education



1st Reading October 19th, 1989
2nd Reading November 27th, 1989
3rd Reading
Royal Assent

(Reprinted as amended by the Social Development Committee)

EXPLANATORY NOTES

The Bill will continue the existing pension plan established under the *Teachers' Superannuation Act, 1983* (which contains the basic pension plan) and the *Superannuation Adjustment Benefits Act* (which requires inflation adjustments for benefits payable under the basic plan).

Changes will be made respecting who is eligible to become a member of the plan, the level of contributions required under the plan and certain rules governing pension transfers and the purchase of credit under the plan. Certain provisions of the pension plan concerning entitlement to benefits and the administration of the plan will be changed to meet the requirements of the *Pension Benefits Act, 1987*. Additional technical changes are made with respect to the administration of the plan.

Three alternative mechanisms for amending the pension plan will be provided. Initially, the Lieutenant Governor in Council will be able to amend the plan by order. The Bill will permit the government to enter into an agreement with the members to establish joint control or member control over the plan. In the event of an agreement for joint control, amendments to the pension plan will be made according to the terms of the agreement. In the event of an agreement for member control, Schedule 1 (containing the details of the plan) will be repealed and amendments to the plan will be made by the members. Ownership of surplus and responsibility for deficits that may arise under the pension plan will be concomitant with control over the plan.

An Ontario Teachers' Pension Plan Board will be created to administer the pension plan and pension fund. Its composition, powers and duties will be as set out in the pension plan.

Custody of the pension fund will be transferred from the Treasurer to the Board. The Treasurer will be responsible for paying any deficit that may exist when the pension fund is transferred to the Board.

Related amendments to the *Teaching Profession Act* will authorize the Ontario Teachers Federation to enter into agreements with the government concerning the pension plan and to represent the members of the pension plan in governing the plan.

The Bill is structured as an Act with two Schedules. The Act contains the particulars of the continuation of the pension plan (sections 2 to 5), the establishment of the Board (sections 6 to 8), the amending mechanisms (sections 9 to 11), the transfer of the pension fund from the Treasurer to the Board (section 12), transitional provisions (sections 13 to 15) and the amendments to the *Teaching Profession Act* (section 16).

Schedule 1 contains the details of the pension plan.

Schedule 2 requires a valuation of the pension fund as of the date it is transferred from the Treasurer to the Board. It also provides for special monthly payments by the Treasurer to liquidate the unfunded liability of the plan as it exists when custody of the fund is transferred.

CHANGES TO THE PENSION PLAN:

The following are the key changes in the terms of the pension plan:

1. *Membership.* Eligibility criteria for active membership in the plan are specified. (*Sections 2 to 9 of Schedule 1*) Full-time and contractual part-time employees who are qualified as teachers are required to become members, while occasional employees may elect to join the pension plan.
2. *Contributions.* The amount of required contributions is increased. (*Sections 18, 21, 24 and 25 of Schedule 1*)

3. *Benefits.* Changes required by the *Pension Benefits Act, 1987* include the following:

A person's entitlement to a pension for his or her post-1986 employment vests and his or her contributions are locked in after two years of continuous membership in the plan. (*Sections 30 to 35 of Schedule 1*)

If a member entitled to a pension dies before beginning to receive it, the member's spouse, beneficiary or estate is entitled to a benefit based on the member's post-1986 employment. (*Sections 61 to 66 of Schedule 1*)

The amount of a spouse's survivor pension is increased from 50 per cent to 60 per cent of the member's pension, with a corresponding reduction in the amount of the member's pension. The member and spouse can waive the increase. (*Section 68 of Schedule 1*)

A pensioner who marries after retirement may elect to provide a survivor pension for a spouse, with a corresponding reduction in the amount of the member's pension. (*Sections 70 to 72 of Schedule 1*). (This change is not required by the *Pension Benefits Act, 1987*).

4. *Pension transfer and purchase of credit.* A person who ceases to be an active member of the pension plan may transfer his or her pension benefit to another pension plan or locked-in retirement savings arrangement. (*Section 37 of Schedule 1*)

The rules governing purchases of credited service are set out: for a leave of absence or a break in service (*section 94 of Schedule 1*); for an absence for a religious holiday (*section 95*); for an absence due to a strike or lockout (*section 96*); for a repurchase by a former member who rejoins the plan (*section 97*); for approved service outside Ontario (*section 98*); for service in specified circumstances at a designated private school (*section 99*); and, for other employment (*sections 100 to 103*).

Beginning in 1992 for most purchases of credited service, the member will be required to pay the actuarial cost of the pension improvement being purchased. This includes purchases made under a reciprocal agreement with another pension plan. (*Sections 94, 97, 98, 102 to 104 of Schedule 1*)

Bill 66

1989

**An Act to revise the
Teachers' Superannuation Act, 1983 and to make
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SCHEDULE 1

**ONTARIO TEACHERS' PENSION
PLAN**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“active plan member”, of the pension plan, means a person who is making the contributions required of an active member of the plan;

“Board” means the Ontario Teachers' Pension Plan Board;

“Minister” means the Minister of Education;

“pension fund” means the pension fund maintained to provide benefits in respect of the Ontario Teachers' Pension Plan;

“pension plan” means the Ontario Teachers' Pension Plan.

Pension plan continued

1983, c. 84

R.S.O. 1980, c. 490

2.—(1) A pension plan to be known as the Ontario Teachers' Pension Plan continues the pension plan set out in the *Teachers' Superannuation Act, 1983* and the regulations thereunder, including the benefits provided under the *Superannuation Adjustment Benefits Act* in relation to the pensions provided under the *Teachers' Superannuation Act, 1983*.

Defined benefits plan
1987, c. 35

(2) The pension plan shall be a defined benefit plan within the meaning of the *Pension Benefits Act, 1987*.

Plan documents

(3) The terms of the pension plan are as set out in Schedule 1 to this Act and in such other governing documents as may be created or adopted under this Act or that Schedule.


Adminis-
trator
1987, c. 35
R.S.C. 1952,
c. 148

3. The Board shall administer the pension plan and manage the pension fund in accordance with this Act, the *Pension Benefits Act, 1987* and the *Income Tax Act (Canada)*.

Pension fund
1983, c. 84

4. The Teachers' Superannuation Fund established under the *Teachers' Superannuation Act, 1983* is continued as the pension fund maintained to provide benefits in respect of the pension plan.

Contributions
by the
Crown

5.—(1) The Treasurer shall pay from the Consolidated Revenue Fund an amount equal to contributions under the pension plan payable by the Minister. 

Payments re
transitional
valuation

(2) The Treasurer shall make the payments required under Schedule 2.

Deficiency

(3) If in a year the amount of cash and assets capable of sale in the pension fund is insufficient to meet the payments out of the fund in the year after the sale of the assets capable of sale, the Treasurer shall pay from the Consolidated Revenue Fund an amount sufficient to make up the deficiency.

(4) Subsection (3) ceases to apply if an agreement mentioned in subsection 11 (1) is in force. Limitation

6.—(1) The Teachers' Superannuation Commission is continued under the name of the Ontario Teachers' Pension Plan Board and is constituted as a corporation without share capital. Board established

(2) The *Corporations Act* does not apply with respect to the Board. Application of
R.S.O. 1980,
c. 95

7. The composition of the Board shall be as is set out in the pension plan. Composition of the Board

8. The powers and duties of the Board shall be those set out in the pension plan. Powers, etc., of the Board

9.—(1) The Lieutenant Governor in Council by order may amend the pension plan as set out in Schedule 1 and, without restricting the generality of the foregoing, may, Amendment of the plan

- (a) determine the methods or formulas to be used to calculate any pension or other benefit, refund or interest rate provided under the plan;
- (b) increase or prospectively reduce, eliminate or modify any pension or other benefit, refund or interest rate set out in the plan;
- (c) vary or provide a method for determining a variation in the rate of contributions required to be paid under the plan;
- (d) extend, modify or restrict the conditions upon which persons may become members of the plan;
- (e) regulate the administration of the plan;
- (f) determine the composition of the Board and its powers and duties.

(2) Before making an order amending the pension plan, the Lieutenant Governor in Council shall give the Ontario Teachers' Federation and each of its affiliates forty-five days' notice of the amendment. Notice

(3) To the extent that an amendment to the pension plan conflicts with the *Pension Benefits Act, 1987* in a matter in which the conflict is not authorized by this Act or Schedule 1, the amendment is void. Idem
1987, c. 35

Application
of
R.S.O. 1980,
c. 446
Tabling of
orders

(4) The *Regulations Act* does not apply with respect to an order amending the pension plan.

(5) The Minister shall lay an order made under subsection (1) before the Assembly if it is in session or, if not, at the next session.

Agreement
for joint
responsibility

10.—(1) The Lieutenant Governor in Council may enter into an agreement with the representatives of active plan members which provides for the following matters:

1. The joint management of the plan by the Crown and representatives of the active plan members.
2. The sharing of entitlement to surplus under the plan and of liability for deficiencies in the pension fund by the Crown, the employers who contribute under the plan and the active plan members.
3. Prior consultation between the Crown and representatives of the active plan members concerning any change in benefits under the plan or in the rate or amount of contributions to the pension fund by the Crown or by active plan members.
4. Mediation procedures to be used if, after consultation, the Crown and the representatives are unable to agree upon a change in benefits or in the rate or amount of contributions.
5. The terms upon which the Lieutenant Governor in Council shall exercise the powers described in section 9.
6. Such other matters as the Lieutenant Governor in Council by order may provide.

Idem

(2) If the Lieutenant Governor in Council enters into an agreement as described in subsection (1), the agreement may provide that the Lieutenant Governor in Council shall exercise the powers set out in section 9 of this Act in accordance with the terms of the agreement.

Agreement
for member
responsibility

11. The Lieutenant Governor in Council, by order, shall repeal Schedule 1 upon the Crown entering into an agreement with the representatives of members of the plan that provides,

- (a) that the pension plan will continue;

- (b) that the entitlement to surplus and the liability for deficiencies in the pension fund is permanently assumed by the active plan members;
- (c) that the liability of the Crown to contribute under the plan is limited to a specified amount or to a specified percentage of member contributions under the plan;
- (d) that the members may amend the plan, subject to the restrictions described in clauses (b) and (c).

12.—(1) In this section,

“Superannuation Adjustment Fund account” means the account maintained in the Superannuation Adjustment Fund under the *Superannuation Adjustment Benefits Act* in respect of the Teachers’ Superannuation Fund;

Transfer of pension funds

R.S.O. 1980, c. 490

“Teachers’ Superannuation Fund” means the Teachers’ Superannuation Fund under the *Teachers’ Superannuation Act, 1983*.

1983, c. 84

(2) As of the 31st day of December, 1989, the Treasurer shall pay to the Superannuation Adjustment Fund interest at the rate and upon the terms determined by the Lieutenant Governor in Council on the cash balances that from time to time stood to the credit of the Superannuation Adjustment Fund account during the period from the 1st day of April, 1989 to the 31st day of December, 1989.

Payment of accrued interest

(3) Interest payable by the Treasurer on assets in the Superannuation Adjustment Fund account held on the 1st day of April, 1989 shall be accrued to the 31st day of December, 1989 and paid as of that date despite a later time for payment specified in any instrument that provides for payment of the interest, and the payment made to the account reduces the liability of the Treasurer under the instrument for interest by the amount paid.

Idem

(4) Payments under subsections (2) and (3) shall be made from the Consolidated Revenue Fund.

Payment from Consolidated Revenue Fund

(5) As of the 31st day of December, 1989, the Treasurer shall transfer from the Superannuation Adjustment Fund account to the Teachers’ Superannuation Fund the assets and liabilities in the Superannuation Adjustment Fund account, including assets transferred and payments made to that

Transfer from the Superannuation Adjustment Fund

account under this section, and, as of that date, the Superannuation Adjustment Fund account ceases to exist in the Consolidated Revenue Fund.

Issuance of
debentures

(6) The transfer of assets under subsection (5), other than debentures, shall be made by the issuance to the Teachers' Superannuation Fund of debentures of the Province of Ontario that are equal to the amount of the assets and that, in the Treasurer's opinion, provide for the payment of principal and interest on terms substantially equivalent to those on which the assets are held in the Superannuation Adjustment Fund account on the 31st day of December, 1989.

Idem

(7) Debentures referred to in subsection (6) may be in such amounts and upon such terms as to the payment of principal and interest, maturing at such time or times and either with or without the privilege of prepayment of the whole or any part of the principal amount of any such debenture as, in the Treasurer's opinion, meet the requirements of this section, and any debenture may provide that it is not assignable or transferable.

Transfer of
assets

(8) As of the 1st day of January, 1990, the Treasurer shall transfer to the custody and control of the pension fund the assets which are held by the Teachers' Superannuation Fund on the 31st day of December, 1989.

Transfer of
liabilities

(9) As of the 1st day of January, 1990, all liabilities of the Teachers' Superannuation Fund become liabilities of the pension fund.

Investments
authorized
1987, c. 35

(10) Despite the *Pension Benefits Act, 1987* and the regulations thereunder, the receipt and holding by the Board of debentures issued or transferred under this section shall not be considered imprudent or unreasonable or contrary to that Act and the regulations thereunder, and the nature, amount and terms of the debentures may be taken into account by the Board and any committee of the Board in determining future investments of the assets of the pension plan.

Non-
application of
1987, c. 35,
s. 82

(11) Section 82 of the *Pension Benefits Act, 1987* does not apply to the transfers described in this section.

Temporary
account
authorized

(12) During the period from the 31st day of December, 1989 to the 30th day of June, 1990, the Treasurer may establish outside the Consolidated Revenue Fund one or more accounts for such period as the Treasurer considers advisable to facilitate the orderly transfer of assets to the pension fund and to facilitate administration of the pension plan.

13.—(1) The *Teachers' Superannuation Act, 1983*, as it reads on the 31st day of December, 1989, continues to apply to the computation or payment of every allowance, annuity, pension or deferred pension or payment to the payment of which a person has become entitled under that Act before that date, and continues to apply in respect of every person who, within the meaning of that Act, has ceased to be a contributor on or before that date and is entitled to a deferred allowance under that Act.

Continued application
1983, c. 84

(2) The *Teachers' Superannuation Act, 1983*, as it reads on the 31st day of December, 1989, continues to apply in respect of every person who is entitled to a survivor benefit, death benefit, right or allowance with respect to contributions made by a person referred to in subsection (1).

Idem

14. Every allowance, pension or deferred pension or other payment under the *Teachers' Superannuation Act, 1983* or a predecessor Act or under the *Superannuation Adjustment Benefits Act*, including any payment authorized to be made from the Consolidated Revenue Fund, that, before the 1st day of January, 1990, a person is receiving, is entitled to receive, or is entitled to receive with the payment thereof deferred until the year 1990 or later, shall be paid out of the pension fund in accordance with the Act under which entitlement to the payment arose.

Payment of pensions,
predecessor
Acts
1983, c. 84
R.S.O. 1980,
c. 419

15. All agreements entered into before the 31st day of December, 1989 by the Teachers' Superannuation Commission under the authority of clause 75 (1) (g) of the *Teachers' Superannuation Act, 1983* are continued and expire on the 30th day of June, 1990.

Certain
agreements
continued

16.—(1) Section 3 of the *Teaching Profession Act*, being chapter 495 of the Revised Statutes of Ontario, 1980, is amended by striking out "and" at the end of clause (d), by adding "and" at the end of clause (e) and by adding thereto the following clause:

- (f) to represent all members of the pension plan established under the *Teachers' Pension Act, 1989* in the administration of the plan and the management of the pension fund.

1989, c. 92

(2) Section 9 of the said Act is amended by adding thereto the following clause:

- (d) act as the representative of the members of the pension plan established under the *Teachers' Pension*

1989, c. 92

Act, 1989 including carrying out the following functions:

1. Appointing persons to be members of the Ontario Teachers' Pension Plan Board created under that Act.
2. Entering into an agreement with the Crown as described in section 10 or 11 of that Act.
3. Negotiating, agreeing to or directing amendments to the plan as permitted under that Act or an agreement entered into under that Act.
4. Entering into an agreement on behalf of the Federation to indemnify a person appointed under paragraph 1 against any costs sustained with respect to legal proceedings arising out of an act or omission done in the execution of that person's duties as a member of the Ontario Teachers' Pension Plan Board.

Repeals

17. The following are repealed on the 1st day of January, 1990:

1. The *Teachers' Superannuation Act, 1983*, being chapter 84.
2. The *Teachers' Superannuation Amendment Act, 1986*, being chapter 13.
3. The *Teachers' Superannuation Amendment Act, 1987*, being chapter 19.
4. Section 75 of the *Family Law Act, 1986*, being chapter 4.
5. Section 68 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64.

Commence-
ment

18.—(1) This Act, except Schedule 1, comes into force on the 31st day of December, 1989.

Idem

(2) Schedule 1 comes into force on the 1st day of January, 1990.

Short title

19. The short title of this Act is the *Teachers' Pension Act, 1989*.

SCHEDULE 1

ONTARIO TEACHERS' PENSION PLAN

PART I

INTERPRETATION

1.—(1) In this Schedule,

Definitions

“active member” means a person employed in education who is making contributions under the plan and includes a person receiving long-term income protection benefits under an agreement approved by the employer and by whom or on whose behalf contributions are being made;

“active member on LTIP” means an active member as described in section 6;

“administrator” means the board of governors;

“average salary”, of a member, means the average salary determined in accordance with section 15;

“board of education” has the same meaning as “board” in subsection 1 (1) of the *Education Act*;

R.S.O. 1980,
c. 129

“child” has the same meaning as in subsection 1 (1) of the *Family Law Act*, 1986;

1986, c. 4

“date of disability”, of an active member on LTIP, means the date on which the member ceases to be employed in education as a result of the disability;

“dependent child”, of a deceased member, means a child who,

(a) is less than eighteen years of age,

(b) is eighteen or more years of age but less than twenty-five years of age and is in full-time attendance at a school or university, having been in such attendance substantially without interruption since the child reached eighteen years of age or since the member died, whichever occurred later, or

(c) is a child other than a child described in clause (b), is eighteen or more years of age and is disabled, having been disabled without interruption since the time the child reached eighteen years of age or since the member died, whichever occurred later;

“designated organization” means an organization designated under subsection 119 (2);

“designated private school” means a school designated under subsection 119 (1);

“employed in education” means employed as described in section 2, 7, 8 or 9;

“member” means a person who, as a result of his or her employment in education, is entitled to benefits or to a refund of contributions under the pension plan;

"re-employed pensioner" means a member receiving a retirement pension who becomes employed in education;

"school year" means the twelve-month period that begins on the 1st day of September;

1987, c. 35 "spouse" has the same meaning as in section 1 of the *Pension Benefits Act, 1987*;

"standard interest rate" means the interest rate determined under section 89;

R.S.C. 1985, c. C-8 "Year's Maximum Pensionable Earnings", in relation to a year, means the Year's Maximum Pensionable Earnings prescribed under the *Canada Pension Plan*.

Qualification
as a teacher

(2) A person is considered to be qualified as a teacher,

- (a) if the person holds a valid certificate of qualification or a letter of standing as a teacher in Ontario; or
- (b) if a board of education has a letter of permission granted by the Minister of Education in respect of the person.

Employment

(3) A person is considered to be employed,

- (a) full-time, if the person is required to work throughout each work day of a year or of a session; and
- (b) part-time, if the person is required to work on a regular but not full-time basis.

Idem

(4) A person is considered to be employed on an occasional basis as a teacher and not part-time if the person is an occasional teacher within the meaning of section 1 of the *Education Act*.

R.S.O. 1980, c. 129

PART II

PARTICIPATION

A. Membership in the Plan

Eligibility for
membership

2.—(1) Every person is eligible to be an active member of the pension plan who is qualified as a teacher and is employed,

- (a) as a teacher in a school within the meaning of subsection 1 (1) of the *Education Act*;
- (b) as a teacher in a school outside Ontario under a teacher exchange system authorized by the Minister of Education;
- (c) as a teacher by the minister of a ministry of the Government of Ontario;
- (d) as a teacher in a school or a class operated by the Metropolitan Toronto and Region Conservation Authority; or
- (e) by a board of education.

Idem

(2) Every person is eligible to be an active member of the pension plan who is qualified as a teacher and is employed,

- (a) as a teacher in a designated private school; or
- (b) in a designated capacity by a designated organization.

(3) No person is eligible to be an active member of the pension plan, Exception

- (a) if the person is regularly employed outside Ontario and is performing services in Ontario under a teacher exchange system approved by the Minister of Education;

- (b) if the person contributes to a pension fund to which the Crown contributes, other than the *Canada Pension Plan*, the *Quebec Pension Plan* or the fund established under this plan; or

R.S.C. 1985,
c. C-8
R.S.Q. 1977,
c. R-9

- (c) if the person is seventy-one or more years of age.

3.—(1) Every person employed as described in subsection 2 (1) full-time or part-time becomes an active member of the plan on the later of, Commence-
ment of
membership

- (a) the 1st day of January, 1990; or

- (b) the date the employment contract begins.

(2) Subject to subsection 5 (1), every person employed as described in subsection 2 (2) full-time or part-time becomes an active member of the plan on the day that is the latest of, Idem

- (a) the 1st day of January, 1990;

- (b) the date the employment contract begins; or

- (c) the date the designation of the private school or the organization is effective.

(3) Subject to subsection 4 (1), every person employed in education on an occasional basis may elect to become an active member on or after the person's first day of employment in a school year. Idem

(4) Despite subsections (1), (2) and (3), every member receiving a retirement pension under the pension plan or a predecessor Act who becomes re-employed in education becomes an active member on the earlier of, Commence-
ment of
membership,
re-employed
pensioner

- (a) the member's ninety-sixth day of employment in a school year; or

- (b) the member's twenty-first day of employment in education in a school year following three school years during each of which the member has been re-employed for fewer than ninety-six days. ➤

(5) For the purpose of clause (4) (b), the member's employment in education, if any, before the 1st day of January, 1990 shall not be considered. Idem

(6) A member receiving a retirement pension under the pension plan or a predecessor Act who becomes re-employed in education may elect to become an active member immediately upon becoming re-employed. Idem

4.—(1) A person employed in education on an occasional basis who elects to become an active member continues to be an active member in any year in which he or she is employed in education after making the election unless the person has terminated membership under Part IV. Election re
occasional
employee

Obligations	(2) An active member described in subsection (1) shall inform the member's employer of his or her active membership whenever he or she becomes re-employed in education after making the election.
Election re designated private schools, etc.	5.—(1) A person employed at a designated private school or a designated organization on the date the designation becomes effective may elect not to become an active member of the plan.
Time for election	(2) An election under this section is not effective unless delivered in writing to the governing body of the designated private school or designated organization and to the administrator, <ul style="list-style-type: none"> (a) not later than three months after the effective date of designation for the private school or organization, if the person is qualified as a teacher when the designation takes effect; or (b) not later than three months after the date the person becomes qualified as a teacher, if the person is not so qualified on the effective date of designation for the private school or organization.
Active member on LTIP	6.—(1) An active member who ceases to be employed in education because of a disability and who is receiving payments under a long term income protection agreement approved by the administrator or the member's employer or former employer is entitled to continue as an active member of the plan.
Eligibility	(2) A person's eligibility to be an active member under this section ceases on the day that is the earlier of, <ul style="list-style-type: none"> (a) the normal retirement date of the member; or (b) the day the member begins receiving a pension under the pension plan.
Idem	(3) The active membership of a person described in subsection (1) continues only if the contributions required from an active member under the pension plan are made by or on behalf of the person.
Definition	(4) In subsection (1), "agreement" means an agreement to provide long term income protection in the event of a member's long term disability that is entered into by an insurer within the meaning of section 1 of the
R.S.O. 1980, c. 218	<i>Insurance Act</i> and, <ul style="list-style-type: none"> (a) the Minister of Education; (b) a board of education;
R.S.O. 1980, c. 495	(c) the Ontario Teachers' Federation established under the <i>Teaching Profession Act</i> ;
R.S.O. 1980, c. 464	(d) an affiliate within the meaning of section 1 of the <i>School Boards and Teachers Collective Negotiations Act</i> ; or
	(e) an authority approved by the administrator.
Active membership, university faculty	7.—(1) A member who, during an absence as defined in subsection 94 (1), becomes employed on the staff of a faculty of education of an Ontario university on or after the 1st day of January, 1990 is an active member of the plan.
Limitation	(2) A person is eligible for active membership under this section for a maximum of five school years.

8.—(1) A person who, on the 1st day of January, 1990, is qualified as a teacher and is employed full-time on the staff of a faculty of education of an Ontario university is an active member of the plan as long as the person continues in full-time or part-time employment at such a faculty.

Transitional
re
universities

(2) A person who, on the 1st day of January, 1990, is qualified as a teacher and is employed part-time on the staff of a faculty of education of an Ontario university is an active member of the plan as long as the person continues either part-time or full-time employment at such a faculty.

Idem,
part-time
employee

9.—(1) This section applies with respect to a person who,

Transitional
re Ryerson,
CAATs

- (a) is qualified as a teacher and is employed by Ryerson Polytechnical Institute; or
- (b) was deemed, under a predecessor of this Act, to be employed in education by a college of applied arts and technology.

(2) A person who, on the 1st day of January, 1990, has been employed full-time by Ryerson Polytechnical Institute or a college of applied arts and technology continuously since the 1st day of September, 1984 is an active member of the pension plan as long as the person continues in full-time employment either at Ryerson or at such a college.

Idem, full-
time
employee

(3) A person who, on the 1st day of January, 1990, has been employed part-time by Ryerson Polytechnical Institute or a college of applied arts and technology continuously since the 1st day of September, 1984 is an active member of the pension plan as long as the person continues in part-time or full-time employment either at Ryerson or at such a college.

Idem,
part-time
employee

B. Credit for Service

10.—(1) An active member receives one year of credited service for working the number of hours or days normally worked during a school year by a full-time employee in the occupational group in which the member is employed.

Credited
service

(2) An active member receives credited service for part of a year in the proportion that the number of hours or days worked by the member during the school year bears to the number of hours or days normally worked during a school year by a full-time employee in the occupational group in which the member is employed.

Idem, partial
year

(3) The amount of credited service of an active member on LTIP in a year is calculated using the formula,

Amount of
credited
service

$$A \times (B / C)$$

in which,

“A” is the amount of contributions for the year made by or on behalf of the member,

“B” is the number of hours or days normally worked during a school year by a full-time employee in the occupational group in which the member is employed or, in the case of a member who is no longer employed in education, was last employed before the date of disability, and

“C” is the amount of contributions normally made by the full-time employee described in the definition of “B” for the period described

in that definition, calculated at the salary used to calculate the amount of the member's contributions. ▲

Limitation (4) A person shall not receive credited service for employment unless contributions in respect of the employment are made by or on behalf of that person.

Idem (5) No person is entitled to receive more than one year of credited service in respect of the person's employment during one school year.

Idem (6) Subject to subsection (7), no person is entitled to accumulate more than thirty-five years of credited service under the plan.

Exception (7) A member who accumulates thirty-five years of credited service may continue to accumulate credited service until the month in which he or she reaches the age which, when added to the member's credited service, equals ninety.

Partial year 11.—(1) The length of a member's credited service determined under this section applies for the purpose of determining the member's entitlement to a benefit but does not apply for the purpose of calculating the amount of the benefit.

Idem (2) If an active member accumulates more than twenty days but less than one year of credited service as determined under section 10 during one school year, the member's credited service shall be considered to be credited service for the whole year. ▲

Idem (3) If a member described in subsection (2) receives a pension during the school year, the member shall receive credited service only for those months during which the member does not receive a pension.

Idem (4) If a member described in subsection (2) becomes employed in education for the first time on or after the 1st day of January, 1990, the member shall receive credited service only for that portion of the school year during which the member is an active member. ▲

Idem (5) Subsection (2) does not apply with respect to credited service purchased by a member for a period when the member was not employed in education.

C. Calculation of Pensionable Salary

Pensionable salary 12.—(1) A member's pensionable salary for a school year is the remuneration paid to the member during the school year respecting employment in education and excludes,

- (a) remuneration for services other than for employment in education;
- (b) perquisites related to employment;
- (c) payments related to accumulated sick leave or other employment benefit credits;
- (d) payments related to retirement or termination of employment; or
- (e) payments to reimburse the member for expenses incurred during the course of employment.

Idem (2) Pensionable salary excludes the amounts described in clauses (1) (a) to (e) whether paid under a contract or gratuitously by an employer.

(3) The pensionable salary of a member who receives board or lodging related to employment in education shall be deemed to be such amount, having regard for the value of the board or lodging, as is determined by the administrator. Idem

(4) The pensionable salary of a member who receives a refund of contributions under section 28 (overpayments) shall be reduced in the proportion that the amount of the refunded contributions bears to the amount of contributions originally paid for the year. Idem

13.—(1) Subject to subsection (2), the pensionable salary of an active member on LTIP is the amount of his or her pensionable earnings, expressed as an annualized amount, for the last school year before the member began receiving LTIP benefits. Pensionable salary re active member of LTIP

(2) The pensionable salary for a school year for an active member on LTIP whose contribution is made under subsection 21 (2) shall be considered to be the amount used to calculate the amount of the contribution. Idem

14.—(1) The pensionable salary of a member who purchases credited service under section 94, 95 or 96 for an absence or break in service is the amount of remuneration that, in the opinion of the member's employer, the member would have earned had he or she not taken the absence or break. Pensionable salary re purchases of credit

(2) The pensionable salary of a member who purchases credited service under section 103 is the amount of the member's remuneration for employment during the applicable period. Idem

15.—(1) The average salary of a member, Average salary

- (a) with more than five years' credited service is the average of the member's annual pensionable salary for the five school years during which it was highest; and
- (b) with five years' or less credited service is the average of the member's annual pensionable salary.

(2) For the purpose of determining the average salary of a member employed more than twenty days but less than an entire school year or an active member on LTIP whose LTIP payments are based upon a less than full-time salary, the annual pensionable salary of the member is calculated using the formula, Part-time or occasional employee

$$(A / B) \times (C - D)$$

in which,

“A” is the amount of the member's pensionable salary for the school year,

“B” is the lesser of,

- (a) the number of days of credited service accumulated by the member during the school year, and
- (b) the number of days that the administrator determines are normally worked during a school year by a full-time employee in the same occupational group as the member,

“C” is the number of days worked during a school year by a full-time employee in the same occupational group as the member, and

"D" is the sum of the number of days in the school year before the member first becomes employed in education and the number of days in the school year after the member ceases to be employed in education.

Restriction (3) If a member purchases credited service for all or part of a year, the member's average salary may be calculated using his or her salary for that year only if the member,

(a) purchases credited service for the whole year; or

(b) purchases credited service for part of the year and is employed in education for the rest of it.

D. Transitional

Transitional membership 16.—(1) Every person who has credit in the Teachers' Superannuation Fund on the 31st day of December, 1989 and who is not entitled to an allowance under a predecessor of this Act becomes an active member of the pension plan upon completing one day of employment in education on or after the 1st day of January, 1990.

Idem, active member on LTIP 1983, c. 84 (2) Every person who was making contributions or on whose behalf contributions were being made on the 31st day of December, 1989 under an agreement referred to in section 4 of the *Teachers' Superannuation Act, 1983* or under a predecessor of that section is considered to be an active member on LTIP.

Transitional re credited service 17. Every active member shall be considered to have accumulated credited service under the pension plan in an amount equal to the credit for service that he or she had accumulated under a predecessor of this Act.

Re-employed pensioners 18. A re-employed pensioner making contributions under the pension plan or a predecessor of this Act on or after the 1st day of September, 1989 up to the 1st day of January, 1990 is entitled to a refund of contributions, if any, made in respect of the first ninety-five days or less of employment during that period.

PART III

CONTRIBUTIONS

A. Member Contributions

Amount of member's contribution R.S.C. 1985, c. C-8 R.S.Q. 1977, c. R-9 19.—(1) Every active member who is required to contribute to the *Canada Pension Plan* or to the *Quebec Pension Plan* shall contribute for a year,

(a) 8.9 per cent of that portion of the member's pensionable salary below the amount of the Year's Basic Exemption as prescribed under the *Canada Pension Plan*;

(b) 7.1 per cent of that portion of the member's pensionable salary from the amount of the Year's Basic Exemption up to and including the amount of the Year's Maximum Pensionable Earnings; and

(c) 8.9 per cent of that portion of the member's pensionable salary that exceeds the amount of the Year's Maximum Pensionable Earnings.

(2) Every active member who is not required to contribute to the *Canada Pension Plan* or to the *Quebec Pension Plan* shall contribute 8.9 per cent of the member's pensionable salary for the year. Idem

(3) For the purpose of calculating the contributions of a member whose pensionable salary is less than \$10,000, the member's pensionable salary shall be deemed to be \$10,000. Pensionable salary

20.—(1) The employer of an active member shall deduct the amount the member is required to contribute under section 19 from the salary paid to the member. Collection of member contributions

(2) An employer shall deliver to the administrator or deposit to the account of the pension fund on or before the last day of each month in which a member's salary is paid the amount deducted for the member's contribution. Transfer of amount deducted

(3) An employer shall pay interest on amounts in arrears from the date the payment is due to the date it is made, calculated at the standard interest rate plus 4 per cent. Interest payable

(4) An employer shall make such reports to the administrator as the administrator requires in respect of member contributions. Report to administrator

21.—(1) The amount of the required contribution for an active member on LTIP is, Contributions re active members on LTIP

(a) 6.9 per cent of the pensionable salary of a member who becomes disabled before the 1st day of January, 1991; and

(b) 8.9 per cent of the pensionable salary of a member who becomes disabled after the 31st day of December, 1990. ➡

(2) An active member on LTIP may elect to increase his or her required contribution by calculating it using an amount selected by the member that is, Inflation-adjusted pensionable salary

(a) not less than the member's pensionable salary; and

(b) not greater than the amount of the member's pensionable salary after it is adjusted for inflation under section 80 as if it were a pension. ➡

(3) An active member on LTIP is required to give notice to his or her employer or former employer of an election under subsection (2) before the 30th day of November in the year to which it applies. Restriction re election

(4) An active member on LTIP shall give notice on the first day of each school year to his or her employer or former employer that the member continues to be an active member on LTIP. ➡ Notice of status

22. The contributions required under subsection 21 (1) from an active member on LTIP who is receiving benefits under a long term income protection plan established under the *Public Service Act* shall be paid on behalf of the member by the Minister. Minister's payments re active member on LTIP

R.S.O. 1980, c. 418

23.—(1) The required contribution for an active member on LTIP shall be paid to the person who was his or her employer on the date of disability. Collection re active member on LTIP

- Idem (2) Payments under subsection (1) must be made on or before the fifteenth day of the month following the month in which each payment under the long term income protection agreement is made to the member.
- Increased contributions (3) Despite subsection (2), if an active member on LTIP makes an election under subsection 21 (2), the member shall pay a lump sum before the 30th day of November in the year for which the election is made equal to the amount of increase in the member's required contributions for the year that results from the election.
- Transfer of contribution (4) Subject to subsection (5), an employer to whom a payment in respect of an active member on LTIP is to be made under this section shall, whether or not the payment is made, deliver to the administrator on or before the last day of each month in which the member's LTIP payment is required the amount of the member's required contribution.
- Idem (5) An employer who receives a payment under subsection (3) shall deliver it to the administrator or deposit it to the account of the pension fund not later than the 31st day of December in the year in which the employer receives it.
- Interest payable (6) Interest is payable on payments in arrears made to the employer or by the employer from the date the payment is due to the date it is made, calculated at the standard interest rate plus 4 per cent.
- Cause of action (7) An employer may maintain an action for the recovery of an amount paid to the administrator under subsection (4) if the employer has not received the corresponding payment of required contributions for an active member on LTIP.

B. Employer Contributions

- Liability for contributions **24.**—(1) Employer contributions in respect of an active member employed as described in subsection 2 (1) shall be paid by the Minister.
- Idem (2) Subsection (1) does not apply with respect to any contribution in relation to which the member is required under this pension plan to make the contribution that would otherwise be made by the Minister.
- Idem (3) Employer contributions in respect of an active member employed as described in subsection 2 (2) or section 7, 8 or 9 shall be paid by the employer of the member.
- Idem (4) Employer contributions in respect of an active member on LTIP shall be paid by the person making the employer contributions in respect of the member immediately before the date of disability.
- Contributions by the Minister **25.**—(1) The Minister shall contribute in each year an amount equal to the required contributions made during the year before the preceding year by or on behalf of those members for whom the Minister is required to make employer contributions.
- Idem, active members on LTIP (2) In addition to the amount required under subsection (1), the Minister shall contribute 4 per cent of the pensionable salaries of active members on LTIP who become disabled before the 1st day of January, 1991.
- Due date 1987, c. 35 (3) The Minister's contribution is due on the 1st day of January in each year and not as required under the *Pension Benefits Act, 1987*.
- Interest payable (4) Interest on the Minister's contribution is payable for the period beginning on the 1st day of June of the year that was two years before the

date on which a payment is due and ending on the day before the payment is made, calculated at the standard interest rate in effect on that 1st day of June.

(5) Interest payable in respect of a period before the 1st day of January, 1990 shall be calculated, Idem, transitional

(a) up to that date, in accordance with the *Teachers' Superannuation Act, 1983*, c. 84

(b) on and after that date, at the standard interest rate in effect on the 1st day of January, 1990. ▲

(6) The Minister shall deliver contributions to the administrator or deposit them to the account of the pension fund. Delivery

(7) To reduce the time between the date of payment mentioned in subsection (3) and the payment of contributions by or on behalf of those members for whom the Minister is required to make employer contributions, the Lieutenant Governor in Council may, despite subsections (1) and (4), by order require the Minister to make payments for such number of months in the preceding year as are specified in the order in respect of contributions in those months by or on behalf of those members for whom the Minister is required to make employer contributions. Order of Lieutenant Governor in Council

(8) An order made under subsection (7) shall revise the period of time mentioned in subsection (1) in respect of which contributions by the Minister are computed so that it reflects the additional contributions required to be made by the Minister. Idem

(9) An order under subsection (7) shall adjust the date from which interest is to be calculated under subsection (4) to reflect the reduced time between the last month in which contributions are made by or on behalf of those members for whom the Minister is required to make employer contributions and the month when the Minister pays an amount equal to those contributions. Idem

26.—(1) An employer shall contribute in each month an amount equal to the required contributions made during the month by or on behalf of those members for whom the employer is required to make employer contributions. Contributions by employers

(2) An employer's contribution is due on the last day of the month. Due date

(3) Interest on an employer's contribution is payable from the date the payment is due to the date it is made, calculated at the standard interest rate plus 4 per cent. Interest payable

(4) An employer shall deliver contributions to the administrator or deposit them to the account of the pension fund. Delivery

C. Refund of Overpayments

27. The administrator shall refund contributions or other payments made in error or not permitted under the pension plan, together with interest, if the administrator received the contributions or other payments. Refund error

28.—(1) An active member who works a greater number of days in a school year than are normally worked by a full-time employee in the occupational group in which the member is employed is entitled to a refund of contributions in accordance with this section. Overpayments

Idem 1987, c. 35 (2) Despite section 79 of the *Pension Benefits Act, 1987*, the person required to make employer contributions in respect of a member described in subsection (1) is entitled to a refund of employer contributions in accordance with this section, if the employer contributions have been paid.

Amount of refund (3) The amount of the refund of contributions is calculated using the formula,

$$A \times [1 - (B / C)]$$

in which,

“A” is the amount of the member’s required contributions for employment in education during the school year,

“B” is the number of days normally worked in the school year by a full-time employee in the occupational group in which the member is employed, and

“C” is the number of days worked in the school year by the member for which the member’s contributions have been made.

Interest payable (4) Interest is payable on a refund of contributions from the last day of the school year until the refund is paid.

Lump sum (5) A refund of contributions shall be paid as a lump sum.

Refund, re-employed pensioners 1987, c. 35 1983, c. 84 **29.** Despite subsection 64 (4) of the *Pension Benefits Act, 1987*, a person described in subsection 46 (3) of the *Teachers’ Superannuation Act, 1983* who became re-employed in education for less than twenty days between the 1st day of September, 1986 and the 31st day of August, 1989 is entitled to the refund described in that section.

PART IV

PAYMENTS UPON TERMINATION OF MEMBERSHIP

A. Vesting

Vesting of benefits **30.—**(1) Upon accumulating two years of credited service any part of which relates to employment on or after the 1st day of January, 1987, a member is entitled to a deferred pension in respect of credited service after that date.

Idem (2) A member is entitled to a deferred pension upon accumulating ten years of credited service.

Payment of deferred pension (3) A deferred pension shall be calculated and paid in accordance with Part V.

Limit (4) No person is entitled to more than one deferred pension in respect of the same period of employment.

Entitlement on termination of membership **31.—**(1) A member who is not entitled to a deferred pension is entitled upon ceasing to be employed in education to terminate his or her membership in the plan by taking a refund of contributions in accordance with sections 33 and 34.

Idem (2) A member who is entitled to a deferred pension is entitled upon ceasing to be employed in education to terminate his or her membership in

the plan by taking a refund described in section 35 or by a transfer of funds and a refund of excess contributions, if applicable, made in accordance with section 36.

(3) Despite an earlier time required under the *Pension Benefits Act*, 1987 for paying refunds, a member is entitled to a refund of contributions ninety days after the date the member ceases to be employed in education, if no contributions are paid or required to be paid by or on behalf of the member.

Limitation
1987, c. 35

(4) Subsection (3) applies with necessary modifications with respect to a refund of contributions payable to a person who ceased to be employed in education before the 1st day of January, 1990.

Idem,
transitional

32. A person who terminates his or her membership is not entitled to the rights and does not enjoy the privileges of a former member under the *Pension Benefits Act*, 1987.

Rights of
former
members

B. Refunds and Transfers

33. A member who is not entitled to a deferred pension in respect of employment on or after the 1st day of January, 1987 is entitled to a refund of the member's contributions in respect of that employment together with interest thereon.

Refund re
post-1986
contributions

34.—(1) A member who has less than ten years of credited service and who is not entitled to a deferred pension relating to employment before the 1st day of January, 1987 is entitled to a refund in the amount of the member's contributions in respect of credited service before the 1st day of January, 1987 together with interest thereon.

Refund re
pre-1987
contributions

(2) A member with less than ten years credited service who ceases to be employed in education in or after the year in which the member reaches sixty-five years of age is entitled to a refund equal to twice the amount of the member's contributions in respect of credited service before the 1st day of January, 1987 together with interest thereon.

Refund at or
after sixty-
five years of
age

35.—(1) This section applies with respect to a member entitled to a deferred pension relating to employment before the 1st day of January, 1987.

Refund re
pre-1987
deferred
pension

(2) A member who ceases to be employed in education before reaching forty-five years of age is entitled to a refund in the amount of the member's contributions for credited service before the 1st day of January, 1987 together with interest thereon.

Before
reaching
forty-five
years of age

(3) A member who ceases to be employed in education on or after reaching forty-five years of age is entitled to a refund in the amount of the member's contributions in respect of credited service before the 1st day of January, 1965 together with interest thereon.

On or after
forty-five
years of age

(4) A member who receives a refund of contributions under this section is not entitled to receive a deferred pension for the credited service to which the refund relates.

Reduction in
deferred
pension

36.—(1) A member entitled to a deferred pension relating to employment after the 31st day of December, 1986 is entitled to a refund, upon ceasing to be employed in education, of the amount by which the member's required contributions plus interest for the period after that date exceeds one half of the commuted value of the deferred pension for that period.

50 per cent
rule

Exclusion

(2) Subsection (1) does not apply with respect to a member's contributions for which no corresponding employer contribution is required under section 25 or 26.

Transfer re
deferred
pension

1987, c. 35

37. A member entitled to a deferred pension who ceases to be employed in education is entitled to a transfer of the commuted value of the deferred pension to another retirement savings arrangement in accordance with section 43 of the *Pension Benefits Act, 1987* and to a refund of excess contributions.

Application
for refund,
etc.

38.—(1) An application for a refund of contributions or a transfer of funds shall be in a form provided by the administrator.

Payment of
refund

(2) A refund shall be paid in a lump sum.

PART V

RETIREMENT PENSIONS

A. Entitlement to Pension

One pension
only

39.—(1) No member is entitled to more than one retirement pension under the pension plan in respect of the same period of credited service.

Idem

(2) A member receiving a disability pension under the pension plan is not eligible to receive a retirement pension.

Retirement

(3) No member under the age of seventy-one is entitled to begin to receive a retirement pension while the member is employed in education.

Normal
retirement
date

40. The normal retirement date of a member is the first day of the month following the date on which the member reaches sixty-five years of age.

Entitlement
to pension
(2 year rule)

41.—(1) Subject to section 42, a member who has at least two years of credited service is entitled to receive a retirement pension for the member's lifetime calculated under subsection (3) and a payment calculated under subsection (4).

Commence-
ment

(2) A retirement pension under this section begins as of the member's normal retirement date.

Amount
of pension
(2 year rule)

(3) The amount of the retirement pension, before adjustment for inflation, is calculated using the formula,

$$(A \times B) - C$$

in which,

“A” is 2 per cent of the member's average salary,

“B” is the number of years of the member's credited service relating to employment on or after the 1st day of January, 1987, and

“C” is the amount, if any, calculated under section 81 (CPP reduction).

Payment,
pre-1987
service

(4) A member with less than ten years of credited service is entitled to a refund of contributions, if any, together with interest thereon relating to employment before the 1st day of January, 1987.

42.—(1) A member who has at least ten years of credited service for employment in whole or in part before the 1st day of January, 1987 is entitled to receive a retirement pension for the member's lifetime calculated under subsection (3). Entitlement to pension (10 year rule), transitional

(2) A retirement pension under this section begins as of the member's normal retirement date. Commencement

(3) The amount of the retirement pension, before adjustment for inflation, is calculated using the formula, Amount of pension (10 year rule)

$$(A \times B) - C$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service, and

"C" is the amount, if any, calculated under section 81 (CPP reduction).

43.—(1) A member who has accumulated at least that number of years of credited service that, when added to the member's age upon termination of employment in education, totals ninety years is entitled to a retirement pension for the member's lifetime calculated under subsection (4). Entitlement to pension (special early retirement)

(2) A member who ceases to be employed in education after the 31st day of May, 1987 and before the 1st day of September, 1990 and who has thirty-five years of credited service is entitled to a retirement pension for the member's lifetime calculated under subsection (4). Idem (35 year rule)

(3) A retirement pension under this section begins as of the beginning of the month following the date the member ceases to be employed in education or, at the election of the member, of any month thereafter that is not later than the month after the month in which the member reaches seventy-one years of age. Commencement

(4) The amount of the retirement pension, before adjustment for inflation, is calculated using the formula, Amount of pension

$$(A \times B) - C$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service, and

"C" is the amount, if any, calculated under section 81 (CPP reduction).

44.—(1) A member entitled to a deferred pension under section 41 or 42 may elect to begin to receive a retirement pension on the first day of any month after the month that is ten years before the member's normal retirement date. Early retirement option

(2) The amount of the annual retirement pension, before adjustment for inflation, of a member who elects early retirement under subsection (1) shall be calculated using the formula, Amount of early retirement pension

$$[A \times B \times (1 - C)] - D$$

in which,

“A” is 2 per cent of the member’s average salary,

“B” is,

- (a) for a member entitled to a pension under section 42, the number of years of the member’s credited service, and
- (b) for a member entitled to a pension under section 41, the number of years of the member’s credited service for employment after the 31st day of December, 1986,

“C” is an amount equal to 0.05 times the lesser of,

- (c) the number of years by which the member’s age is less than sixty-five on the date the pension is to begin, and
- (d) ninety minus the sum of,
 - (i) the number of years of the member’s credited service determined under section 11, and
 - (ii) the member’s age on the date the pension is to begin, and

“D” is the amount, if any, calculated under section 81 (CPP reduction).

Commuted value

(3) Despite subsection (2), the commuted value of the retirement pension received on early retirement shall be not less than the commuted value of the retirement pension to which the member would be entitled on the normal retirement date based upon the member’s credited service up to the early retirement date.

Postponed pension option

45.—(1) A member may elect to begin to receive his or her retirement pension in any month after the member’s normal retirement date until the month in which the member reaches seventy-one years of age.

Amount of late retirement pension

(2) The amount of the annual retirement pension, before adjustment for inflation, of a member who elects late retirement as described in subsection (1) is calculated using the formula,

$$(A \times B) - C$$

in which,

“A” is 2 per cent of the member’s average salary,

“B” is the number of years of the member’s credited service, and

“C” is the amount, if any, calculated under section 81 (CPP reduction).

Re-employed pensioner

46.—(1) No retirement pension is payable to a re-employed pensioner while the re-employed pensioner is an active member.

Recalculation of pension

(2) If a re-employed pensioner accumulates one year or more of credited service after becoming an active member, other than by means of a purchase of credited service or by the annualization of a partial year of

credited service under section 11, and, if the re-employed pensioner makes an application to the administrator, the amount of the pensioner's retirement pension shall be recalculated in accordance with the terms of the pension plan in force on the date of the application.

(3) A re-employed pensioner who does not accumulate one year of credited service after becoming an active member is entitled when the re-employment ceases, Exception

- (a) to the resumption of the retirement pension to which the pensioner was entitled immediately before becoming re-employed; and
- (b) to the refund of the member's required contributions, together with interest thereon, made during the re-employment.

(4) A re-employed pensioner who receives pension payments to which the pensioner is not entitled shall repay the amount so received, together with interest thereon, before becoming entitled to further payments under the pension plan. Repayment

B. Payment of Retirement Pensions

47.—(1) A member who wishes to begin receiving a retirement pension shall apply to the administrator. Application for retirement pension

(2) A member who does not apply to begin receiving a retirement pension shall be deemed to do so on the day the member reaches seventy-one years of age. Deemed application

48.—(1) The administrator shall begin payment of a member's retirement pension not later than the later of, Payment of pension

- (a) the month following the month in which the member ceases to be employed in education; or
- (b) the month following the month in which application for the pension is complete.

(2) The administrator shall pay a retirement pension in monthly instalments on the last day of the month. Monthly instalments

(3) If the administrator does not begin paying a pension when required to do so under subsection (1), interest shall be paid on the payments beginning on the later of, Interest payable

- (a) the end of the month in which the member becomes entitled to the pension; or
- (b) the date three months after the month in which application for the pension is complete.

49.—(1) A member receiving a retirement pension shall notify the administrator in writing promptly upon becoming re-employed in education. Notice of re-employment

(2) A member who fails to comply with subsection (1) is not entitled to receive retirement pension payments for a period during which notice should have been given under that subsection. Failure to give notice

Repayment
of pension

(3) A member who receives pension payments to which the member is not entitled shall repay the amount so received, together with interest thereon, before becoming entitled to further payments under the pension plan.

PART VI

DISABILITY PENSIONS

A. Entitlement to Disability Pension

Entitlement
to disability
pension

50.—(1) This section applies to a member with at least ten years of credited service who becomes disabled while employed in education and who, as a result of the disability, ceases before the normal retirement date to be employed in education.

Full disability
pension

(2) If the administrator finds that a member described in subsection (1) is incapable of further employment in education, the member is entitled to a full disability pension for the member's lifetime.

Partial
disability
pension

(3) If the administrator finds that a member described in subsection (1) is incapable of further employment in education, the member is entitled to a partial disability pension for the member's lifetime.

Eligibility

(4) A member who has previously terminated his or her membership and who returns to membership and purchases credited service for previous employment in education is not eligible to receive a disability pension until the member accumulates two additional years of credited service.

Idem

(5) Subsection 11 (2) (partial year) does not apply for the purpose of determining a member's accumulation of the two additional years of credited service under subsection (4).

Effect of re-
employment

51.—(1) A member receiving a full disability pension who becomes employed ceases to be entitled to a full disability pension.

Idem

(2) A member receiving a disability pension who becomes employed in education as a teacher ceases to be entitled to a disability pension.

Reduced
partial
disability
pension

(3) A member receiving a disability pension who becomes employed in education otherwise than as a teacher is entitled to receive a reduced partial disability pension.

Application

(4) This section applies with respect to a member who is receiving a disability pension on or after the 1st day of January, 1990.

Amount of
full disability
pension

52.—(1) The amount of the annual full disability pension, before adjustment for inflation, for a member is calculated using the formula,

$$(A \times B) - C$$

in which,

“A” is 2 per cent of the member's average salary,

“B” is the number of years of the member's credited service under the plan, and

“C” is the amount, if any, calculated under section 81 (CPP reduction).

(2) The amount of a partial disability pension, before adjustment for inflation, for a member is calculated using the formula,

Amount of
partial
disability
pension

$$[(A \times B) (1 - C)] - D$$

in which,

“A” and “B” have the same meaning as in the formula for calculating the amount of a full disability pension,

“C” is an amount equal to 0.025 times the lesser of,

- (a) the number of years by which the member's age on the date the pension begins is less than the member's age at the normal retirement date, and
- (b) ninety minus the sum of,
 - (i) the number of years of the member's credited service determined under section 11, and
 - (ii) the member's age on the date the pension begins, and

“D” is the amount, if any, calculated under section 81 (CPP reduction).

(3) The annual amount of the partial disability pension, before adjustment for inflation, shall not be less than 75 per cent of the full disability pension.

Limitation

(4) The annual amount of a member's reduced partial disability pension, before adjustment for inflation, is calculated using the formula,

Amount of
reduced
partial
disability
pension

$$A - [(A + B) - C]$$

in which,

“A” is the amount of the member's disability pension immediately before the member begins the new employment in education,

“B” is the salary for the year from the member's new employment in education,

“C” is the annual salary of the member immediately before the member ceased, as a result of the disability, to be employed in education, increased in respect of each year after the person so ceased to be employed up to the year in which the member begins the new employment in education,

- (a) as if it were being adjusted for inflation in accordance with section 80, for periods beginning on or after the 1st day of January, 1990, and
- (b) in the same manner as a pension would be increased under the *Superannuation Adjustment Benefits Act*, for periods ending before the 1st day of January, 1990, and

R.S.O. 1980,
c. 490

in which the amount represented by “[(A + B) - C]” is the greater of,

- (c) zero, and

(d) the amount otherwise determined in accordance with the definitions of "A", "B" and "C".

Resumption
of disability
pension

53.—(1) Subject to subsection (2), if a member becomes re-employed in education and ceases to receive a disability pension under the pension plan or a predecessor Act or begins to receive a reduced disability pension, the member is entitled upon ceasing the re-employment to the resumption of the original disability pension without adjustment of the amount of the pension.

Idem

(2) A member described in subsection (1) who completes the equivalent of two years of full-time employment in education after becoming re-employed and then ceases to be so employed shall make a fresh application for a pension, and the terms of the pension plan on the date the application is made shall apply with respect to the member's entitlement to a pension.

Change of
disability
status re
survivor
pension

54.—(1) This section applies if a member receiving a partial disability pension or a reduced partial disability pension dies while the administrator is considering whether the member is entitled to a full disability pension based upon fresh medical evidence concerning the member's disability.

Determi-
nation
by the
administrator

(2) Having regard to the facts established at the date of the member's death, the administrator shall determine whether the member would have been entitled, immediately before the date of death, to a full disability pension.

Deemed
receipt

(3) For the purpose of calculating the amount of a survivor pension, child's pension or beneficiary's pension, if the administrator determines that the member would have been entitled to a full disability pension, the member shall be deemed to have been receiving it on the date of death.

B. Payment of Disability Pension

Application
for disability
pension

55.—(1) A member shall apply for a disability pension within two years after the date when the member ceases, as a result of the disability, to be employed in education.

Idem

(2) The administrator shall accept an application for a disability pension that is made after the time described in subsection (1) if the administrator is satisfied,

- (a) that the delay in making the application resulted from a delay in diagnosing the disability; or
- (b) that the member was unable, because of the effects of the disability, to make the application within the time described in subsection (1).

Proof of
disability

(3) No application for a disability pension shall be considered by the administrator until the administrator has received,

- (a) the certificate of a legally qualified medical practitioner designated by the administrator, certifying that the applicant became mentally or physically disabled while employed in education and indicating the nature and degree of the disability; and
- (b) a report of the medical referee of the administrator containing such recommendations as the medical referee considers proper with regard to the granting of a disability pension to the applicant.

Disability
pension,
predecessor
Acts

56.—(1) This section applies with respect to a person who ceased to be employed in education before the 1st day of January, 1990 as a result of a

mental or physical incapacity and who did not apply for a disability allowance under a predecessor of this Act.

(2) Section 55 applies with necessary modifications to an application by a person described in subsection (1). Application

(3) The person is entitled to a disability allowance determined in accordance with the *Teachers' Superannuation Act, 1983*. Entitlement 1983, c. 84

(4) Clause 17 (1) (d) or 18 (1) (d) of the *Teachers' Superannuation Act, 1983* does not apply if the administrator accepts an application under subsection 55 (2). Idem

57.—(1) Subject to subsection (2), a member's disability pension shall begin as of the first day of the month following the month in which the member ceases to be employed in education. Commence-
ment of
disability
pension

(2) No disability pension shall begin as of a date earlier than one year before the date the administrator receives the completed application for the pension. Idem

(3) A member's reduced partial disability pension shall begin as of the first day of the month following the month in which the member becomes re-employed. Reduced
partial
disability
pension

(4) The administrator shall pay a disability pension in monthly instalments. Monthly
instalments

(5) Disability pension payments are due on the last day of the month. Due date

(6) Interest shall be paid on overdue pension payments if the administrator does not begin paying a pension by the end of the month in which the member becomes entitled to receive it. Interest
payable

58.—(1) The administrator may at any time require a member who is receiving a disability pension to furnish evidence, in such form as the administrator directs, of the member's mental or physical condition. Evidence of
medical
condition

(2) If the member fails to furnish evidence within a reasonable time that his or her condition continues to be of a nature that entitles the member to receive the disability pension, the administrator shall terminate payment of the pension. Failure to
furnish
evidence

(3) If the administrator terminates payment of a full disability pension, the member may request the administrator to review the decision to terminate payment. Review by
administrator

(4) If the administrator is satisfied upon reviewing a decision to terminate payment that the member is entitled to a disability pension under section 50 or 51, the administrator shall pay the disability pension. Idem

(5) This section does not apply with respect to a member who has reached normal retirement age. Application

59.—(1) A member receiving a disability pension shall notify the administrator in writing promptly upon becoming employed or changing employment. Notice of re-
employment

(2) A member who fails to comply with subsection (1) is not entitled to receive a disability pension payment during a period when notice should have been given under that subsection. Failure to
give notice

Repayment
of pension

(3) A member who receives pension payments to which the member is not entitled shall repay the amount so received, together with interest thereon, before becoming entitled to further payments under the pension plan.

PART VII

BENEFITS UPON DEATH

A. Upon the Death of a Member not Entitled to a Pension

Refund of
contributions

60. The personal representative of a member who dies without becoming entitled to a deferred pension is entitled to a refund of the member's contributions together with interest thereon.

B. Upon the Death of a Member Entitled to a Deferred Pension

Pre-re-
tirement
(spousal)
death benefit

61.—(1) If a member who is entitled to a deferred pension or a disability pension dies before the first instalment of the pension is due, the person who is the spouse of the member on the date of death is entitled to receive,

- (a) the benefit described in section 62 in respect of the member's employment, if any, before the 1st day of January, 1987; and
- (b) the benefit described in section 63, in respect of the member's employment, if any, on or after the 1st day of January, 1987.

Application

(2) Subsection (1) does not apply if the member and the spouse are living separate and apart on the date of death of the member.

Pre-1987
(spousal)
death benefit

62.—(1) This section applies with respect to that portion of the death benefit that relates to a member's employment before the 1st day of January, 1987.

Survivor
pension

(2) The spouse of a member with ten years or more credited service is entitled to the survivor pension described in subsection (3) for the lifetime of the spouse.

Pre-1987
survivor
pension

(3) The amount of the survivor pension, before adjustment for inflation, shall be based upon the member's credited service for employment before the 1st day of January, 1987 and shall be one half of the amount of the pension, before adjustment for inflation,

- (a) that would have been paid to the member at the date of death, if the member was at least sixty-five years of age on the date of death; or
- (b) that would have been paid to the member as of the first day of the month following the month in which he or she would have reached sixty-five years of age, if the member was less than sixty-five years of age on the date of death.

Refund of
contributions

(4) The spouse of a member with less than ten years of credited service is entitled to a refund of the member's contributions for employment before the 1st day of January, 1987 together with interest thereon.

Post-1986
(spousal)
death benefit

63.—(1) This section applies with respect to that portion of the death benefit that relates to a member's employment on or after the 1st day of January, 1987.

Benefit

(2) The spouse of a member with two years or more credited service is entitled to the benefit described in subsection (4).

(3) The spouse of a member with less than two years of credited service is entitled to a refund of the member's contributions for employment on or after the 1st day of January, 1987 together with interest thereon. Refund of contributions

(4) The benefit referred to in subsection (2) is, Idem

(a) a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for credited service for employment on or after the 1st day of January, 1987; or

(b) an immediate or a deferred survivor pension for the lifetime of the spouse, the commuted value of which is at least equal to the commuted value of a pension for credited service for the member's employment on or after the 1st day of January, 1987, calculated as if the member had become entitled to a retirement pension on the date of death.

(5) The spouse may elect the form of benefit to be paid under subsection (4) and a spouse who does not do so within twelve months after the death of the member shall be deemed to have elected to receive an immediate survivor pension. Election

(6) A spouse who elects to receive a deferred survivor pension may elect to begin to receive the pension at any time up to the month after the month in which the spouse reaches seventy-one years of age. Deferred survivor pension

64.—(1) This section applies with respect to the dependent children of a member entitled to a deferred pension or a disability pension who died before the first instalment of the pension was due and, Pre-retirement child's pension

(a) who had a spouse who became entitled to a survivor pension who subsequently died; or

(b) who did not have a spouse entitled to a survivor pension.

(2) Subject to subsection (3), each dependent child of a member is entitled upon the death of the spouse or the member, as the case may be, to receive a child's pension while the child remains a dependent child. Entitlement to child's pension

(3) No child's pension is payable in respect of the credited service of a deceased member for which the spouse of the member received the lump sum payment described in clause 63 (4) (a). Exception

(4) The amount of the child's pension, before adjustment for inflation, shall be one half of the amount of the pension, before adjustment for inflation, Amount of child's pension

(a) that would have been paid to the member at the date of death, if the member was at least sixty-five years of age on that date;

(b) that would have been paid to the member as of the first day of the month following the month in which he or she would have reached sixty-five years of age, if the member was less than sixty-five years of age on the date of death.

(5) The child's pension shall be shared equally among the member's dependent children. Idem

(6) The share of the child's pension of each of the children who ceases to be a dependent child accrues to the remaining dependent children, if any. Share accrues to others

- Benefit to beneficiary **65.**—(1) A beneficiary designated by a member entitled to a deferred pension or a disability pension is entitled to the benefit described in subsection (2),
- (a) if the member dies before the first instalment of the pension is due; and
 - (b) if, on the date of death, the member does not have a spouse or a dependent child entitled to a benefit payable on his or her death.
- Amount of benefit (2) The benefit is a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for credited service for employment on or after the 1st day of January, 1987.
- Benefit to estate **66.**—(1) The estate of a member entitled to a deferred pension or a disability pension who dies before the first instalment of the pension is due is entitled to the payments described in this section.
- Idem, no others entitled (2) If no other person is entitled to a benefit on the death of the member, the estate is entitled to,
- (a) a refund of the member's contributions for employment before the 1st day of January, 1987 together with interest thereon; and
 - (b) a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for credited service for employment on or after the 1st day of January, 1987.
- Residual entitlement (3) If another person is entitled to a benefit on the death of the member, the estate is entitled to a refund of the amount by which the member's contributions together with interest thereon exceeds the amount paid to the other person together with interest thereon.

C. Upon the Death of a Pensioner

- Survivor pension, spouse **67.**—(1) If a member is receiving a pension on the date of death, the person who is the spouse of a member on the date the first instalment of the pension was due is entitled to the survivor pension described in subsection (3) for the spouse's lifetime.
- Application (2) Subsection (1) does not apply if the member and the spouse were living separate and apart on the date the first instalment of the member's pension was due.
- Amount of survivor pension (3) Subject to sections 68 and 69, the amount of the annual survivor pension, before adjustment for inflation, payable to the surviving spouse shall be not less than 50 per cent of the pension, before adjustment for inflation,
- (a) that was being paid to the member at the date of death, if the member was at least sixty-five years of age on that date; or
 - (b) that would have been paid to the member as of the first day of the month next following the month in which he or she would have reached sixty-five years of age, if the member was less than sixty-five years of age on the date of death.
- Spousal election re survivor pension 1987, c. 35 **68.**—(1) In the absence of a joint waiver by a member and the member's spouse of the spouse's entitlement under subsection 45 (3) of the *Pension Benefits Act, 1987* (amount of survivor benefit), the amount of the

survivor pension payable on the death of the member shall be not less than 60 per cent of the pension paid to the member during their joint lives.

(2) A waiver referred to in subsection (1) is void if it is delivered to the administrator more than twelve months before the date that the first instalment of the member's pension is due or after the date that the first instalment is due.

Waiver void

(3) In the absence of a waiver referred to in subsection (1), the amount of the pension payable to the member shall be actuarially reduced to allow for payment of the increased survivor pension in accordance with subsection (1).

Adjustment of member's pension

(4) This section does not apply with respect to a member who, before the 1st day of January, 1988, began to receive a pension under a predecessor Act.

Application

69.—(1) A member may direct the administrator to increase the amount of a survivor pension that may become payable under section 67 in respect of the member to an amount equal to 55, 65, 70 or 75 per cent of the member's pension that would be payable if the amount of the pension were calculated without regard to this section.

Increase of survivor pension

(2) A direction must be given in writing and must be delivered to the administrator at least two years before the earlier of,

Time limit

(a) the member's normal retirement date; or

(b) the beginning of the month in which the member's pension begins.

(3) The administrator shall act on a direction delivered after the deadline specified in subsection (2) and before the member applies for a retirement pension if the administrator is satisfied that the member is in good health having regard to the member's age.

Idem

(4) The amount of the pension payable to the member shall be actuarially reduced to allow for payment of the increased survivor pension in accordance with the direction.

Adjustment of member's pension

(5) The commuted value of pension paid to the member including the commuted value of the increased survivor benefit shall not be less than the commuted value of the pension, including survivor benefit, that would otherwise be payable.

Commuted value

(6) A member may revoke a direction given under this section by a written revocation delivered to the administrator before the member begins receiving a pension.

Revocation of direction

(7) A direction given under this section by a member is void if the member dies before beginning to receive a pension.

Direction void

70.—(1) In this section, "new spouse", in relation to a member, means a person who becomes the spouse of the member after the member begins to receive a retirement or disability pension.

Survivor pension, new spouse

(2) A member receiving a retirement or disability pension who does not have a spouse eligible to receive a survivor pension under section 67 may, while receiving the pension, direct the administrator to provide a survivor pension to a new spouse.

Idem

(3) A direction must be given in writing and must be delivered to the administrator on or before the later of,

Time limit

- (a) ninety days after the date on which the member becomes the spouse of the new spouse; or
- (b) if immediately before the member becomes the spouse of the new spouse there is a child who would be entitled upon the death of the member to receive a child's pension under section 73, ninety days after the date on which the child ceases to be eligible to receive the child's pension.

Idem

(4) The administrator shall act on a direction delivered after the deadline specified in subsection (3) if the administrator is satisfied that the member is in good health having regard to the member's age.

Amount of survivor pension

(5) In giving the direction, a member receiving a retirement pension shall direct the administrator to pay a survivor pension in the amount of 50, 55, 60, 65, 70 or 75 per cent of the pension that would otherwise be payable on the first day of the month next following the month in which the member becomes the spouse of the new spouse.

Adjustment of member's pension

(6) The amount of a retirement pension payable to the member shall be actuarially reduced to allow for payment of the survivor pension in accordance with the direction.

Idem

(7) The actuarial reduction required by subsection (6) shall be based upon the ages of the member and of the spouse on the last day of the month in which the direction is delivered to the administrator.

Payment of survivor pension

(8) The administrator shall pay the survivor pension in accordance with the direction but not while there is a person who is eligible to receive a child's pension in respect of the member.

Survivor pension, predecessor Acts

71.—(1) This section applies with respect to a member who, before the 1st day of September, 1984, ceased to be employed in education within the meaning of a predecessor of this Act and who became the spouse of a person after ceasing that employment.

Direction re survivor pension

(2) A member described in subsection (1) may direct the administrator to provide a survivor benefit for the member's spouse and section 70 applies with respect to the direction with necessary modifications.

Time limit

(3) A direction under this section shall be delivered to the administrator on or before the latest of,

- (a) the 31st day of March, 1990;
- (b) ninety days after the date on which the member becomes a spouse; or
- (c) if on the 1st day of January, 1990 there is a child who would be entitled upon the death of the member to receive a survivor allowance under a predecessor of this Act, ninety days after the date on which the child ceases to be eligible to receive the survivor allowance.

Idem

(4) The administrator shall act on a direction delivered after the deadline specified in subsection (3) if the administrator is satisfied that the member is in good health having regard to the member's age.

Deemed direction

(5) A member described in subsection (1) who dies on or before the 31st day of March, 1990 without having given a direction under this section shall be deemed to have given it on that date and shall be deemed to have directed the administrator to pay a 50 per cent survivor pension.

72.—(1) This section applies with respect to a person who became the spouse of a member described in subsection 71 (1) after the member ceased to be employed in education within the meaning of a predecessor of this Act. Survivor pension (prior inquiry)

(2) This section does not apply unless the member has ceased to be a member before the 1st day of January, 1990 because he or she has died. Idem

(3) A spouse described in subsection (1) is entitled to a survivor pension calculated from the date of a written inquiry respecting a survivor pension. Survivor pension

(a) made to the Teachers' Superannuation Commission before the 1st day of January, 1990; or

(b) made to the administrator on or after the 1st day of January, 1990.

(4) The amount of the survivor pension is 50 per cent of the amount of the member's retirement pension on the date of the member's death adjusted for inflation as if it were a pension for the period from the date of the member's death to the date the spouse becomes entitled to the survivor pension. Amount of pension

73.—(1) This section applies with respect to the dependent children of a member who died while receiving a retirement or disability pension and, Child's pension

(a) who had a spouse who died after becoming entitled to a survivor pension; or

(b) who did not have a spouse entitled to a survivor pension.

(2) Each dependent child of a member, upon the death of the spouse or the member, as the case may be, is entitled to a child's pension while remaining a dependent child. Entitlement to child's pension

(3) The amount of the annual child's pension is the amount of the survivor pension to which a spouse of the member was or would have been entitled after the death of the member, shared equally among the dependent children. Amount of child's pension

(4) The share of the child's pension of each of the children who ceases to be a dependent child accrues to the remaining dependent children, if any. Share accrues to others

74.—(1) A beneficiary designated by a member is entitled to a beneficiary's pension upon the death of a member, Beneficiary's pension

(a) who was receiving a retirement or disability pension on the date of death; and

(b) who did not have a spouse entitled to a survivor pension or a child entitled to a child's pension on the date of death.

(2) A direction must be given in writing and must be delivered to the administrator at least two years before the earlier of, Time limit

(a) the member's normal retirement date; or

(b) the beginning of the month in which the member's pension begins.

(3) The administrator shall act on a direction delivered after the deadline specified in subsection (2) and before the member applies for a retire- Idem

ment pension if the administrator is satisfied that the member is in good health having regard to the member's age.

Amount of beneficiary's pension

(4) In giving the direction, the member shall direct the administrator to pay a beneficiary's pension in the amount of 50, 55, 60, 65, 70 or 75 per cent of the member's pension that would otherwise be payable on the date of the member's death if the amount of the pension were calculated without regard to this section.

Adjustment of member's pension

(5) The amount of the pension payable to the member shall be actuarially reduced to allow for payment of the beneficiary's pension in accordance with the direction.

Revocation of direction

(6) A member may revoke a direction by a written revocation delivered to the administrator before the member begins to receive a pension.

Direction void

(7) A direction given under this section by a member is void if the member dies before beginning to receive a pension.

Benefit to estate

75. The estate of a member who was receiving a pension on the date of death is entitled to a refund of the amount by which the member's contributions together with interest thereon exceeds the sum of the amount paid to the member and the amount, if any, paid to every other person who was entitled to a benefit on the member's death, together with interest thereon.

D. Payment of Death Benefits

Commencement of pension

76.—(1) A pension that is payable immediately on the death of a member who was not receiving a retirement or disability pension on the date of death shall begin as of the day after the day the member dies.

Idem

(2) A pension that is payable on the death of a member who was receiving a retirement or disability pension on the date of death shall begin as of the first day of the month after the month in which the member dies.

Payments to estate

77.—(1) If the administrator is unable to locate a personal representative of the estate of a deceased member, the administrator may pay into court any payments that under the pension plan are required to be made to the estate.

Missing beneficiary

(2) If the administrator is unable, after making reasonable inquiries, to locate an individual who is entitled to a death benefit under the pension plan or a beneficiary designated by the deceased member under the *Pension Benefits Act, 1987*, the administrator shall pay to the estate of the deceased member one year after the date of death the amount to which the estate is otherwise entitled when no other person is entitled to a benefit on the death of the member.

1987, c. 35

Missing beneficiary found

(3) If an individual entitled to a death benefit under the pension plan or a beneficiary designated by the deceased member under the *Pension Benefits Act, 1987* applies for the benefit after the administrator makes a payment under subsection (2), the administrator shall pay the individual the amount of the benefit to which the individual is entitled less the amount paid to the estate by the administrator.

Transitional

(4) This section applies with respect to a person with credited service under a predecessor of this Act who dies before the 1st day of January, 1990, as if that person were a deceased member of the pension plan.

Discharge

(5) The administrator is discharged on making a payment in accordance with this section.

78.—(1) In this section, “court” has the same meaning as in Part V of the *Succession Law Reform Act*. Interpleader, more than one applicant
R.S.O. 1980, c. 488

(2) If more than one person applies to the administrator for a benefit in respect of a deceased member, the court, on application by the administrator, by order may direct payment of the benefit or part thereof to one or more of the applicants and shall specify the proportion of the benefit that shall be paid to each of them. Court may order

(3) The administrator’s application shall be made in the same manner as an application under Part V of the *Succession Law Reform Act*. Application to court
R.S.O. 1980, c. 488

(4) Section 62 of the *Succession Law Reform Act* applies with necessary modifications in respect of the allocation of proportions of the benefit and, for the purpose, “dependant” means spouse, child or beneficiary of the deceased member. Application of
R.S.O. 1980, c. 488, s. 62

PART VIII

BENEFITS AND PAYMENTS — GENERAL

A. Adjustments for Inflation

79.—(1) Every retirement pension, disability pension, survivor pension, child’s pension and beneficiary’s pension shall be adjusted for inflation in accordance with section 80. Inflation adjustment, pensions

(2) Every deferred pension payable under the pension plan shall be adjusted for inflation in accordance with section 80 for the period beginning at the end of the last month for which the member has credit under the plan and ending when the pension begins. Idem, deferred pensions

(3) No pension or deferred pension shall be adjusted under this section for inflation in respect of a period before the 1st day of January, 1990. Limitation

80.—(1) In the formulas in this section,

Calculation of inflation adjustments

“A” is the carry forward determined for the immediately preceding year,

“B” is the basic ratio for the year,

“C” is the adjustment ratio for the year,

“D” is the basic ratio for the year after the last year for which the member for whose credit in the pension plan the pension in respect of which the formula is applied is payable has credit in the pension plan, and shall be calculated to a maximum of 1.080 or to a minimum of 1.000, and

“E” is the number of full months in the year that are after the month in the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan.

(2) In this section,

Definitions

"accumulated adjustment ratio", for a person's pension, means the product of the multiplication of all adjustment ratios for the years in the period commencing with the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan and ending with the year for which the accumulated adjustment ratio is being determined;

"adjustment ratio", for a person's pension, means,

- (a) for any year before the year 1976 and for the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan, 1.000,
- (b) if the member for whose credit in the plan the pension is payable ceased to be employed in education in or after the year 1975, for the year after the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan, the ratio determined by the formula " $[(D - 1.000) \times E / 12] + 1.000$ ", and
- (c) for the later of the year 1976 and the second year after the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan and for any subsequent year, the ratio determined by the formula " $A + B$ " calculated to a maximum of 1.080 or to a minimum of 1.000;

"basic ratio", for a year, means the ratio expressed to three decimal places that the average for the Consumer Price Index over the last twelve months of the twenty-four-month period ending with the 30th day of September in the immediately preceding year bears to the average for the Consumer Price Index over the first twelve months of that period;

"carry forward", with respect to the pension of a person, means,

- (a) for any year before the year 1976, for the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan and for the year after that year, nil, and
- (b) for the later of the year 1976 and the second year following the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan and for any subsequent year, the positive or negative number determined by the formula " $A + B - C$ ";

R.S.C. 1985,
c. S-19 "Consumer Price Index" means the Consumer Price Index for Canada as published by Statistics Canada under the authority of the *Statistics Act* (Canada);

1983, c. 84 "member" includes a contributor within the meaning of the *Teachers' Superannuation Act, 1983* or a predecessor Act;

"pension" means a pension to which a person is entitled from the plan other than the adjustment for inflation provided by this section, and an allowance, annuity, deferred annuity or other periodic payments to which a person has become entitled under the *Teachers' Superannuation Act, 1983* or a predecessor Act;

"plan" includes the pension plan established under the *Teachers' Superannuation Act, 1983* and any predecessor Act.

(3) The annual amount of pension payable to a person from the pension fund shall, commencing with the year when payment of the pension is to commence and in each subsequent year that the pension continues to be payable, be adjusted for inflation by multiplying the annual amount of the pension by the accumulated adjustment ratio for the pension of the person for that year, and the amount by which the pension thus adjusted exceeds the annual amount of pension before the adjustment in each year shall be paid to the person entitled to receive the pension for which it is calculated at the same times, in the same manner and subject to the same terms and conditions as apply to the pension in respect of which it is paid.

Payment of inflation adjustment

(4) The ratio determined for the year 1990 under the *Superannuation Adjustment Benefits Act* does not apply to a pension to which this section applies.

Ratio not to apply
R.S.O. 1980, c. 490

(5) For the purpose of determining an accumulated adjustment ratio, a person's re-employment in education for less than twenty-one days in a school year after the person ceases to be employed in education and before the person begins to receive a pension shall not be considered in determining the year in which the person ceases to be employed in education.

Effect of re-employment

B. CPP Reduction

81.—(1) If a member has contributed to the *Canada Pension Plan* or the *Quebec Pension Plan*, the amount of the member's retirement pension, full disability pension or partial disability pension shall be reduced by the amount calculated under subsection (3).

CPP reduction for pensions
R.S.C. 1985, c. C-8
R.S.Q. 1977, c. R-9

(2) A reduction of a member's pension shall apply with respect to pension payments due the month after the earlier of,

Commencement, retirement pension

(a) the month in which the member reaches sixty-five years of age; or

(b) the month in which the first instalment of the member's disability pension, if any, under the *Canada Pension Plan* or the *Quebec Pension Plan* is due.

(3) The amount of the reduction in an annual pension is calculated using the formula,

Amount of reduction

$$0.007 \times A \times B$$

in which,

“A” is the lesser of,

(a) the member's average salary, and

(b) the amount determined under subsection (4), and

“B” is the number of years of the member's credited service for employment on or after the 1st day of January, 1966 in respect of which the member made contributions under the *Canada Pension Plan* or the *Quebec Pension Plan*.

(4) The amount is the average of the Year's Maximum Pensionable Earnings for the year in which the member ceases to be employed in education and for each of the two preceding years.

Idem

C. Payment of Benefits

- Application for benefit **82.**—(1) No benefit under the plan shall be paid before the administrator receives an application for it in the form provided by the administrator.
- Election or direction (2) An election available under the plan or a direction that may be given to the administrator shall be made or given in the form provided by the administrator.
- Multiple pensions **83.** No member is entitled to payment of more than one pension under the plan during the same month or other payment period in respect of the member's credited service.
- Commutation of pensions
1987, c. 35 **84.** The administrator may pay the commuted value of a pension, other than a disability pension, in accordance with section 51 of the *Pension Benefits Act, 1987*.
- Deductions from pensions
1987, c. 35 **85.**—(1) Despite section 66 of the *Pension Benefits Act, 1987*, a person receiving a pension under the pension plan or an allowance under a predecessor Act may direct the administrator to deduct and remit from the pension or allowance on behalf of the person,
- (a) premiums payable under the Ontario Health Insurance Plan by the person;
 - (b) premiums for life, medical, dental or health-related insurance payable by the person under a contract of group insurance approved by the administrator for the purpose of this section; and
 - (c) membership fees payable to the Superannuated Teachers of Ontario Inc.
- Conditions (2) The administrator may impose and require compliance with such conditions as the administrator considers appropriate before acting upon a direction.
- Revocation of direction (3) A person making a direction may revoke it by written notice to the administrator.
- Termination of pension **86.** Every pension terminates as of the end of the month in which the event that terminates the pension occurs.

D. Administration

- Appeal of decision **87.**—(1) A person who is aggrieved by a decision of an employee of the administrator or a committee of the administrator respecting the person's entitlement to, or the amount of, a pension benefit may appeal the decision to the administrator and the administrator shall determine the appeal.
- Idem (2) An appeal shall be made in accordance with the procedures established by the administrator.
- Determination of commuted value **88.** The commuted value of a benefit shall not be less than the amount calculated in accordance with the *Recommendations for Minimum Transfer Values of Pensions* published from time to time by the Canadian Institute of Actuaries and shall be calculated using the rate of interest specified by, and such actuarial tables as may be adopted by, the administrator.
- Calculation of interest **89.**—(1) Unless otherwise indicated, the standard interest rate attributable to a transaction is the rate that is the weighted average effective annual

yield of the debentures held by the pension fund as at the 31st day of December in the year preceding the transaction and interest is compounded annually on the anniversary date of the transaction.

(2) For 1990 the standard interest rate attributable to a transaction is the weighted average effective annual yield of the debentures held by the Teachers' Superannuation Fund under the *Teachers' Superannuation Act, 1983* as at the 31st day of December, 1989. Idem, transitional 1983, c. 84

(3) Interest payable in respect of a period before the 31st day of December, 1989 shall be calculated up to that date at the applicable rate in effect under the *Teachers' Superannuation Act, 1983* and after that date it shall be calculated at the standard interest rate in effect on the 1st day of January, 1990. Idem, transitional

(4) Interest credited under the pension plan on contributions shall be calculated in accordance with the *Pension Benefits Act, 1987* and credited to the member as at the 31st day of December in each year. Interest on contributions 1987, c. 35

(5) Interest is payable in accordance with the *Pension Benefits Act, 1987* on a lump sum payment of the commuted value of a benefit from the effective date of the determination of the commuted value to the date the lump sum is paid. Interest on lump sums 1987, c. 35

90.—(1) At the request of the administrator, a member receiving a pension shall report to the administrator the number of days, if any, that the member is employed in education while receiving the pension. Report re employment in education

(2) If a member does not report within a reasonable time after the request, the administrator shall cease to pay the pension until the report is given. Failure to report

91.—(1) This section applies to a person who, before the 17th day of December, 1971, would have been entitled to more than one allowance under the *Teachers' Superannuation Act* or a predecessor thereof but for section 37 of that Act, if a refund of contributions was made in lieu of the payment of the second allowance. Prior refund re multiple pensions R.S.O. 1970, c. 455

(2) A person who was not paid a second allowance solely because the person was not entitled to more than one allowance under the existing pension plan is entitled to receive a pension calculated under subsection (3) in addition to any pension to which the person is otherwise entitled under the plan or a predecessor Act. Entitlement to reinstatement

(3) The amount of the person's pension is calculated by adjusting for inflation for the period described in subsection (4) the amount of the pension to which the person would have been entitled immediately before payment of the refund with respect to that pension. Amount of pension

(4) An inflation adjustment of the amount described in subsection (3) shall be made for the period ending on the date the person becomes entitled to the pension under this section and beginning on the date that is the later of,

(a) the 1st day of January, 1976; or

(b) the date of payment of the refund of contributions in respect of the second allowance.

(5) Payment of a pension under this section begins as of the date the person applies to the administrator. Payment pension

- Idem (6) No amount is payable under this section in respect of a period before the 1st day of January, 1990.

PART IX

PURCHASE OF CREDIT FOR SERVICE


A. General

- Purchases, general **92.** The purchase of credited service by a member whose completed application is delivered to the administrator on or after the 1st day of January, 1992 shall be made in accordance with this Part.
- Purchases, transitional **93.**—(1) The purchase of credited service by a member who delivers a completed application to the administrator before the 1st day of January, 1992 shall be made in accordance with sections 9, 10, 36, 45 and 48 of the *Teachers' Superannuation Act, 1983* and with sections 7 to 14 of Ontario Regulation 423/84 as those sections read on the 31st day of December, 1989.
- 1983, c. 84
- Idem (2) The *Teachers' Superannuation Act, 1983* as it reads on the 31st day of December, 1989 continues to apply for the purpose of determining a purchase of credited service under subsection (1).
- Transitional (3) Sections 95, 96 and 99 apply with respect to a member's application before the 1st day of January, 1992 in the circumstances described in those sections.
- End of transitional period (4) A person is not eligible after the 31st day of December, 1994 to make or complete a purchase of credited service to which a predecessor Act applies.
- Interest rate (5) For the purpose of a purchase of credited service described in subsection (1) for a period on or after the 1st day of January, 1990, references to the applicable rate of interest in Ontario Regulation 423/84 shall be read as if they were references to the standard interest rate.
- Idem (6) Subsection 89 (3) (interest on contribution) does not apply with respect to a purchase of credited service described in subsection (1) for a period before the 1st day of January, 1990.

B. For Employment in Education

- Absences and breaks in service **94.**—(1) In this section,
 "absence" means a leave of absence, with or without pay, to which a member's employer consents;
 "break in service" means a period when a member is not employed in education or is absent from employment without the employer's consent;
 "return date" means the date determined under subsection (8).
- Purchase re break in service (2) An active member may purchase credited service for a break in service,
 (a) taken for personal or health reasons approved by the administrator;

(b) taken upon the pregnancy of the member, for the birth or adoption of the member's child or for the purpose of caring for the member's child under seven years of age; or	
(c) taken for the purpose of serving as a member of the Legislative Assembly of Ontario, of the House of Commons of Canada or of the council of a municipality or local board within the meaning of section 1 of the <i>Municipal Affairs Act</i> .	
(3) An active member may purchase credited service under this section,	R.S.O. 1980, c. 303 Restriction
(a) if the member was an active member employed in education for a period equal to one school year of full-time employment before beginning the first such absence or break in service; and	
(b) if the member completes seventy days of credited service at any time after the member returns from the latest absence or break in service for which credited service is being purchased.	
(4) An active member may purchase credited service for all or part of an absence <u>or a break in service</u> .	Purchase re absence
(5) No member may purchase credited service for an absence for the purpose of service in political office if the member is contributing to or is entitled to a pension under another registered pension plan other than the <i>Canada Pension Plan</i> or the <i>Quebec Pension Plan</i> in respect of the service.	Idem R.S.C. 1985, c. C-8 R.S.Q. 1977, c. R-9
(6) An active member who elects to purchase credited service on or before the first anniversary of the member's return date shall contribute,	Amount of contribution
(a) an amount not greater than the sum of the required contributions the member would have made if the member were not absent, based upon the pensionable salary that the member's employer advises the administrator that the member would have earned; and	
(b) interest thereon from the date each contribution would have been made and ending on the day it is paid.	
(7) A contribution under subsection (6) shall be paid as a lump sum,	Due date
(a) before the fifth anniversary of the member's return date, for an absence or break in service taken upon the pregnancy of the member, for the birth or adoption of the member's child or for the purpose of caring for the member's child under seven years of age; and	
(b) before the third anniversary of the member's return date, for an absence or break in service not described in clause (a).	
(8) A member's return date following an absence or break in service is the member's twenty-first day of employment in education in the first school year during which the member works more than twenty days following the absence or break.	Return date
(9) A contribution under subsection (6) is considered to be a required contribution for the purpose of sections 25 and 26.	Status of contributions
(10) A member who elects to purchase credited service after the date described in subsection (6) or who fails to make a payment before the due date under subsection (7) shall contribute a lump sum which is, on the date	Amount of contribution, delayed election

of the purchase, equal to the actuarial cost of the expected pension improvement. 

Advance
payments

(11) A member may make contributions during an absence or break in service but the member only becomes entitled to credited service in respect of those contributions upon complying with clause (3) (b).

Idem

(12) A member may make a contribution before completing seventy days of credited service after returning to active membership but the member only becomes entitled to credited service in respect of the contribution upon complying with clause (3) (b).

Idem

(13) A member who makes contributions during an absence or break in service is entitled to a refund of those contributions at any time before completing the purchase of credited service or complying with clause (3) (b).

Refund

(14) A member who makes a contribution before completing seventy days of credited service after returning to active membership is entitled to a refund of the contribution at any time before complying with clause (3) (b).

Limit on
purchase

(15) No member may purchase more than seven years of credited service under this section.

Idem

(16) Subsection (15) does not apply with respect to an absence or a break in service taken upon the pregnancy of the member, for the birth or adoption of the member's child or for the purpose of caring for the member's child under seven years of age but no member may purchase more than two years of credited service in respect of one child or, if more than one child is born or adopted at once, in respect of one such birth or adoption.

Deadline for
purchase

(17) A member is not eligible to purchase credited service under this section while receiving a pension.

Lump sum
payments


(18) A lump sum payment under this section may consist of,

R.S.C. 1952,
c. 148

(a) a partial payment by means of a transfer permitted under the *Income Tax Act* (Canada); and

(b) a second payment of the balance of the amount required to pay for the credited service being purchased by the lump sum.

Absence
during a
school year

 **95.—**(1) An active member may purchase credited service for days that the member is absent from the member's employment if,

(a) the member is absent for the purpose of observing a religious holiday that is not observed by the employer;

(b) the employer approves the absence; and

(c) the member has accumulated at least one year of credited service before the absence.

Amount of
contribution

(2) The member shall contribute the amount of the member's contribution for each day of absence plus the amount of the corresponding employer's contribution.

Interest
payable

(3) The member shall pay interest, calculated at the standard rate, on any contribution that is delivered to the administrator more than one month after the end of the absence.

Limitation

(4) The member may purchase credited service for an absence described in subsection (1) only during the school year in which it occurs.

96.—(1) An active member may contribute for days that the member is absent from employment in education for the purpose of participating in a legal strike or because of a lockout.

Absence re
strike or
lockout

(2) The member shall contribute the amount of the member's required contribution for each day of absence plus the amount of the corresponding employer's contribution.

Amount of
contribution

(3) The member shall pay interest, calculated at the standard rate, on any contribution delivered to the administrator more than one month after the end of the absence.

Interest
payable

97.—(1) This section applies with respect to an active member who previously received a refund of required contributions under the pension plan.

For former
membership

(2) No member may purchase credited service under this section until the member has accumulated, through employment in education, seventy days of credited service in one school year after returning to active membership.

Eligibility

(3) An active member who elects to purchase credited service on or before the later of the first anniversary of the member's return to active membership and the 1st day of January, 1994 shall contribute the amount previously refunded together with interest thereon from the date the refund was made to the first day of the month in which the contribution is paid, calculated at the standard interest rate in effect on the date the refund was made.

Election
within one
year

(4) No member may purchase more days of credited service under subsection (3) than the number of days in respect of which the member received the refund.

Limit

(5) A contribution under subsection (3) shall be paid as a lump sum before the later of the third anniversary of the member's return to active membership and the 1st day of January, 1995.

Due date

(6) A member who elects to purchase credited service after the deadline referred to in subsection (3) or who fails to make the payment before the deadline in subsection (5) shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement.

Required
contribution

98.—(1) An active member may purchase credited service for a period of teaching or supervisory service outside Ontario if, before the service begins,

Approved
service
outside
Ontario

(a) the member is an active member; and

(b) the Minister approves the service.

(2) No member may purchase credited service under this section if the member is entitled to a pension under another registered pension plan, other than the *Canada Pension Plan* or the *Quebec Pension Plan*, in respect of the service.

Idem
R.S.C. 1985,
c. C-8
R.S.Q. 1977,
c. R-9

(3) No member may purchase more than fifteen years of credited service under this section.

Limit

(4) The member shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement.

Amount of
contribution

Transitional
re designated
private
schools
1983, c. 84
R.S.O. 1980,
c. 129

99.—(1) This section applies to an active member,

- (a) who is employed in an organization designated under the *Teachers' Superannuation Act, 1983* or in a school within the meaning of section 1 of the *Education Act*;
- (b) who was employed before the 1st day of September, 1986 in a private school designated under a predecessor of this Act;
- (c) who was employed on the 1st day of September, 1986 and for at least twenty days during the school year beginning on that date in an organization designated under the *Teachers' Superannuation Act, 1983* or in a school within the meaning of section 1 of the *Education Act*; and
- (d) who elected before the 1st day of September, 1986 to be excluded from the benefits and obligations of the predecessor Act.

1983, c. 84

Purchase

(2) An active member may purchase credited service in accordance with subsections 13 (4), (6) and (7) of Ontario Regulation 423/84 as they read on the 31st day of December, 1989, with necessary modifications, for past teaching service in a private school designated under a predecessor of this Act.

Idem

(3) No member is entitled to apply to purchase credited service under this section after the 31st day of December, 1991.

C. For other Employment

For active or
special war
service

100.—(1) An active member may purchase credited service for active service and for special war service.

Idem

(2) Sections 11, 11b and 13 of Ontario Regulation 423/84 as they read on the 31st day of December, 1989 apply with necessary modifications with respect to a purchase for credit under this section.

For teaching
special
subjects

101.—(1) A person may purchase credited service for his or her employment before the 1st day of September, 1957 for employment for fewer than twenty hours per week teaching music, art and crafts, physical and health education, home economics, industrial arts and crafts or another special subject.

Idem

(2) Sections 11a and 11b of Ontario Regulation 423/84 as they read on the 31st day of December, 1989 apply with necessary modifications with respect to a purchase for credit under this section.

For foreign
service as an
educator

102.—(1) An active member may purchase credited service for employment as a provider of teaching or supervisory services,

- (a) if the employment is performed in a jurisdiction other than Ontario or in a school maintained by the Government of Canada for children of members of the Armed Forces, for Canada's aboriginal peoples or for inmates of penal institutions;
- (b) if the administrator considers that the employment is similar to employment in education; and
- (c) if the member was not a member of the pension plan before the time of employment.

Eligibility

(2) No member may purchase credited service under this section if the member is entitled to a pension under another pension plan, other than the

Canada Pension Plan or the *Quebec Pension Plan*, in respect of the employment. R.S.C. 1985, c. C-8

R.S.Q. 1977, c. R-9

(3) No member may purchase more than fifteen years of credited service under this section. Limit

(4) The member shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement. Amount of contribution

103.—(1) An active member may purchase credited service for employment not otherwise described in this Part if the member participated in a pension plan registered under the *Income Tax Act* (Canada) in respect of the employment and if, after making the purchase, the member will not be entitled to receive a pension benefit under that plan. For other employment R.S.C. 1952, c. 148

(2) The member shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement. Amount of contribution

D. Reciprocal Agreements

104.—(1) The administrator may enter into an agreement with the authorized representative of another pension plan respecting the terms upon which persons may transfer benefits and contributions between that plan and the pension plan. Reciprocal agreements

(2) A reciprocal agreement must provide that a person transferring benefits and contributions to the pension plan acquires a benefit under the plan based upon the actuarial cost of the expected benefit on the date of the transfer. Idem

105.—(1) Subject to subsection (2), reciprocal agreements entered into before the 1st day of January, 1990 by the Teachers' Superannuation Commission under section 49 of the *Teachers' Superannuation Act*, 1983 are continued and expire on the 31st day of December, 1996. Reciprocal agreements, transitional 1983, c. 84

(2) Reciprocal agreements referred to in subsection (1) do not expire on the 31st day of December, 1996 if, before that date, the reciprocal agreement is amended to include a term described in subsection 104 (2) or if the agreement includes such a term. Idem

E. Administration

106. An application to purchase credited service shall be made in a form provided by the administrator and shall be delivered to the administrator. Application for purchase

107. A purchase of credited service is effective on the day that is the later of, Effective date of purchase

(a) the day the contribution in relation to the purchase is made; or

(b) the day the member completes the qualifying period of re-employment required for eligibility to make the purchase.

108. A member who is entitled to purchase credited service for a period of employment, break in service or an absence may purchase credited service for a part of the employment, break or absence. Purchase of partial credit

Contribution by spouse, etc. **109.**—(1) A person entitled to a death benefit in respect of a member who dies after applying for but before completing a purchase of credited service under this Part may make the contribution on behalf of the deceased member.

Idem (2) A person referred to in subsection (1) ceases to be entitled to make the contribution when a person receives payment of any death benefit in respect of the member.

PART X

ADMINISTRATION OF THE PLAN

A. General

Extension of time **110.** The administrator may extend any time limit under the pension plan before or after the expiration of the time if the administrator is satisfied that there are reasonable grounds for the extension, and may give such directions as the administrator considers appropriate consequent upon the extension.

Provision of information **111.**—(1) The administrator shall provide to each member of the pension plan the information and documents required under this Act or any other Act.

Idem, to administrator (2) A member, a person who applies for, or receives, a pension, refund or other payment from the pension fund, a board of education or an employer of a member shall provide the administrator, upon request, with such information as the administrator may require to administer the pension plan.

Idem, to members (3) The administrator shall provide within a reasonable time to a member, upon written request, all information relating to the member's contributions and entitlements under the pension plan.

Fiscal year **112.** The fiscal year of the pension plan is the twelve-month period that begins on the 1st day of January.

Actuarial calculations **113.** Actuarial calculations and determinations required under the pension plan shall be made using such actuarial assumptions, principles and methods as may be required or adopted by the administrator.

B. Pension Fund

Payments from pension fund **114.** A payment required under the pension plan must be paid from the pension fund.

Requirement to invest **115.** Moneys in the pension fund that are not required to be paid out must be invested to meet the obligations of the pension plan.



C. Surplus and Deficiency

Actuarial gain **116.**—(1) An actuarial gain disclosed by a going concern valuation made after the initial valuation described in Schedule 2 shall be applied as set out in this section.

Idem (2) The amount of an actuarial gain shall first be applied to reduce and, if possible, eliminate the payments required to liquidate any unamor-

tized balance of a solvency deficiency that is disclosed by the initial valuation or a later valuation.

(3) The amount of an actuarial gain, if any, remaining after a solvency deficiency is eliminated shall be applied to reduce and, if possible, to eliminate a going concern unfunded actuarial liability disclosed by a valuation made after the initial valuation. Idem

(4) The amount of an actuarial gain, if any, remaining after a going concern unfunded actuarial liability is eliminated under subsection (3) shall be applied to reduce and, if possible, to eliminate a going concern unfunded actuarial liability disclosed by the initial valuation. Idem

117.—(1) In this section, Surplus

“going concern assets” means the value of the assets of the pension plan, including accrued and receivable income and the present value of future contributions and investment income, determined on the basis of a going concern valuation;

“going concern liabilities” means the present value of the expenses of the pension plan and the accrued and unaccrued benefits of the plan determined on the basis of a going concern valuation;

“surplus”, in relation to the pension plan, means the amount, as determined by an actuarial valuation, by which the going concern assets of the pension fund exceeds the going concern liabilities of the fund,

- (a) calculated on a going concern basis, for the purposes of a contribution offset or a distribution of surplus, or
- (b) calculated on a plan wind up basis, for the purpose of a distribution of surplus.

(2) The Minister may direct the administrator to apply all or part of the surplus under the pension plan to offset the contributions required under sections 25 (contributions by the Minister) and 26 (contributions by employers) in accordance with subsection (5). Reduction of Minister's contributions

(3) Subject to subsection (4), the Minister shall determine the amount of surplus to be applied to offset contributions and the period during which it is to be applied. Amount

(4) The administrator shall not apply any surplus to offset contributions while the pension plan has a going concern unfunded actuarial liability or solvency deficiency within the meaning of section 1 of Schedule 2 to the Act. Restriction

(5) The amount of a person's required contributions under section 25 or 26 in a month shall be offset by the amount calculated using the formula, Apportionment

$$(A / B) \times C$$

in which,

- “A” is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members in respect of whom the person is required to make employer contributions,
- “B” is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members who made contributions during that period, and

"C" is the amount of the surplus to be applied to offset contributions required under sections 25 and 26 during the month.

Distribution of surplus 1987, c. 35 (6) To the extent permitted under the *Pension Benefits Act, 1987*, the Minister may direct the administrator to pay out of the pension fund all or part of the surplus under the pension plan to the persons required to make contributions under sections 25 and 26 in accordance with subsection (8).

Idem (7) A direction under subsection (6) may be made while the pension plan continues or upon its termination.

Amount (8) The amount of surplus to which a person becomes entitled shall be calculated using the formula,

$$(A / B) \times C$$

in which,

"A" is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members in respect of whom the person is required to make employer contributions,

"B" is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members who made contributions during that period, and

"C" is the amount of the surplus to be distributed.

Deficit **118.**—(1) This section applies if an actuarial valuation of the pension plan, after the initial valuation, discloses a solvency deficiency or a going concern unfunded actuarial liability.

Requirement to contribute (2) Every person required to make contributions under section 25 (contributions by the Minister) or 26 (contributions by employers) shall make additional contributions in accordance with subsection (4).

Idem 1987, c. 35 (3) Within the limit established under the *Pension Benefits Act, 1987*, the Minister shall determine the number of months during which additional contributions shall be made.

Amount (4) The amount of a person's additional contributions in a month shall be calculated using the formula,

$$(A / B) \times C$$

in which,

"A" is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members in respect of whom the person is required to make employer contributions,

"B" is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members who made contributions during that period, and

"C" is the amount of the solvency deficiency or going concern unfunded actuarial liability in respect of which the additional contributions are required during the month.



PART XI

DESIGNATION OF PRIVATE SCHOOLS AND ORGANIZATIONS

119.—(1) The Lieutenant Governor in Council by order may designate a school, college, academy or other educational institution as a designated private school for the purposes of the pension plan, Private schools

- (a) if it gives instruction equivalent to that given in elementary or secondary schools in Ontario;
- (b) if it is not supported in any way by school taxes or by provincial or municipal grants; and
- (c) if it meets the criteria set out in subsection (3).

(2) The Lieutenant Governor in Council by order may designate an organization as a designated organization for the purpose of the pension plan, Organizations

- (a) if it provides services related to elementary or secondary education; and
- (b) if it meets the criteria set out in subsection (3).

(3) The school, college, academy or other educational institution or the organization, Criteria

- (a) must not be operated for profit or gain and any profits must be used to carry out its objects; and
- (b) by its governing body must undertake in writing to make the reports described in subsection (5), to pay the amounts described in subsection (6), and to perform all administrative functions required of an employer for the purposes of the pension plan.

(4) A designation comes into force on the 1st day of September next following the designation. Effective date of designation

(5) The administrator may require a designated private school or designated organization to make annual reports for the purpose of the administration of this Act and the pension plan and to supply such information as to its constitution, operations, teaching staff and otherwise as the administrator may require. Reports

(6) A designated private school or designated organization shall, in accordance with the pension plan, make the employer contributions and collect and remit the contributions by its employees who become active members of the pension plan. Payments under the plan

120.—(1) Upon the recommendation of the Minister, the Lieutenant Governor in Council by order may terminate the designation of a designated private school or a designated organization. Termination of designation

(2) The Minister may recommend the termination of a designation, Grounds

- (a) if the designated private school or designated organization, by its governing body, has requested the termination of the designation;
- (b) if the designated private school or designated organization is not complying with its undertakings; or

- (c) if there is a change in the objects or mode of carrying out the objects of the designated private school or designated organization.

Notice and
submissions

(3) The Minister shall give notice of the proposed recommendation to the governing body and to the employees of the designated private school or designated organization who are active members of the pension plan.

Effective
date

(4) An order by the Lieutenant Governor in Council terminating a designation is effective on the 31st day of August following the date of the order.

Effect of
termination
of
designation

(5) Upon the termination of a designation, the employees of the private school or the organization cease to be eligible to be active members of the pension plan.

Idem

121.—(1) The Lieutenant Governor in Council by order may designate the capacity in which a person must be employed at a private school or organization in order to be eligible to become an active member in the pension plan.

Effective
date

(2) An order terminating a designation is effective on the 31st day of August next following the date of the termination of designation.

Designations,
transitional
1983, c. 84

122. The designation of a designated private school, designated organization and a designated capacity under the *Teachers' Superannuation Act, 1983* that is in effect on the 31st day of December, 1989 shall have effect as a designation made under this Part.

PART XII

ONTARIO TEACHERS' PENSION PLAN BOARD

Definition

123. In this Part, "Board" means the Ontario Teachers' Pension Plan Board.

Composition
of the Board
R.S.O. 1980,
c. 495

124.—(1) In this section, "Executive" means the executive of the Ontario Teachers' Federation as described in subsection 6 (1) of the *Teaching Profession Act*.

Appointment
of Board
members

(2) The Lieutenant Governor in Council shall appoint as Board members five individuals recommended by the Minister and three individuals recommended by the Executive.

Term of
office

(3) Subject to subsection (6), the term of office of a Board member shall not exceed three years.

Idem

(4) The Lieutenant Governor in Council shall determine the term of office of each of those Board members whose appointment is recommended by the Minister.

Idem

(5) The Executive shall determine the term of office of each of those Board members whose appointment is recommended by the Executive.

Idem,
transitional

(6) The term of office of the Board members appointed upon this section coming into force is,

- (a) one year for one of the Board members recommended by the Minister and one of the Board members recommended by the Executive;

(b) two years for two of the Board members recommended by the Minister and one of the Board members recommended by the Executive; and

(c) three years for two of the Board members recommended by the Minister and one of the Board members recommended by the Executive.

(7) A Board member may be reappointed upon the expiry of his or her term of office but no reappointment shall be for a term that, when added to his or her current uninterrupted period in office, exceeds six consecutive years. Reappointment

(8) A former Board member may only be reappointed once three years has elapsed since the end of his or her most recent term of office. Idem

(9) If a Board member ceases to hold office before his or her term expires, the Lieutenant Governor in Council, on the recommendation of the Minister or the Executive, as the case may be, shall appoint another individual to complete the term of office of the original Board member. Vacancy

(10) The members of the Teachers' Superannuation Commission cease to hold office on the 1st day of January, 1990. Transitional

125.—(1) The Board members shall elect from among themselves a chairperson. Chairperson

(2) If the Board members do not elect a chairperson within thirty days after the office of chairperson becomes vacant, the Lieutenant Governor in Council shall appoint a Board member as chairperson. Idem

(3) Upon this section coming into force, the Lieutenant Governor in Council shall appoint a Board member as chairperson. Idem, transitional

(4) The term of office of a chairperson shall be determined by the Board or by the Lieutenant Governor in Council, as the case may be, and shall not exceed two years. Term of office

(5) A chairperson is eligible to hold office for a maximum of three consecutive terms. Re-election

126.—(1) The Board may appoint committees composed of Board members or individuals who are not Board members or both. Composition of committees

(2) The term of office of a committee member is a maximum of three years. Term of office

(3) A committee member may be reappointed upon the expiry of his or her term of office but no reappointment shall be for a term that, when added to his or her current uninterrupted period in office, exceeds six consecutive years. Reappointment

(4) A former committee member may only be reappointed once three years has elapsed since the end of his or her most recent term of office. Idem

127.—(1) A majority of the members of the Board constitutes a quorum of the Board. Quorum

(2) A majority of the members of a committee constitutes a quorum of the committee. Idem

128.—(1) Board members and committee members shall be paid such reasonable remuneration and expenses as the Board may determine. Remuneration and expenses

Idem, public servants	(2) A Board or committee member who is employed in the public service of Ontario is not entitled to be paid remuneration other than an honorarium in recognition of salary lost as a result of attending Board or committee meetings.
Idem	(3) A Board or committee member who is employed in the public service of Ontario may be reimbursed for expenses actually incurred in the performance of his or her duties as a Board or committee member.
Payment out of pension fund	(4) The remuneration and expenses of Board and committee members shall be paid out of the pension fund.
Administrative expenses	129. Administrative and operating expenses of the Board shall be paid out of the pension fund.
Staff	130. —(1) The Board may appoint such employees as it requires to administer the pension plan and manage the pension fund.
Application of R.S.O. 1980, c. 419	(2) The <i>Public Service Superannuation Act</i> applies with respect to such employees of the Board as the Board designates, as if the Board had been designated by the Lieutenant Governor in Council under section 28 of that Act.
Payment out of pension fund	(3) Employees' compensation shall be paid out of the pension fund.
Indemnification	(4) Each employee of the Board and his or her heirs, executors and administrators shall be indemnified and saved harmless by the Board from and against all costs, charges and expenses sustained or incurred in or about any action, suit, proceeding or claim against him or her for any act, omission, deed, matter or other thing made, done or permitted or omitted to be made or done in or about the execution of the duties of his or her employment by the Board, and every payment made for the indemnification is an administrative expense of the Board.
Limitation	(5) Indemnification does not extend to the act or omission to act of any person that was done or omitted to be done dishonestly or in bad faith.
Professional assistance	131. —(1) The Board may engage persons other than those appointed as its employees to provide it with professional, technical or other assistance.
Idem	(2) The Board shall retain an actuary and an auditor.
Payment	(3) Payment of the remuneration and expenses of persons engaged under this section is an administrative expense of the Board.
Powers and duties of the Board	132. —(1) The Board shall administer the pension plan, manage the pension fund and advise the Minister on matters relating to the plan and the fund.
Idem	(2) The Board may exercise such powers as are necessary to carry out its duties.
Idem	(3) The Board may make rules for the conduct and management of its affairs and for the practice and procedure to be followed in matters before it.
Re property	(4) The Board may, (a) acquire, hold in its own name and dispose of real property or an interest in real property for occupation and use by the Board or as an investment by the pension fund;

- (b) participate as a partner or otherwise in a syndicate or association of persons in the acquisition, holding, management or disposition of property;
- (c) enter into an agreement to administer another pension plan and to administer a benefit plan for retired members and to recover the costs of doing so from that plan.

133.—(1) The Board may delegate in writing any of its powers or duties to a committee, an employee of the Board or a person retained by the Board subject to a limitation or condition set out in the delegation.

Delegation by Board

(2) With the approval of the Board, a committee of the Board may delegate in writing any of its powers or duties to an employee of the Board.

Idem, by committee

134.—(1) The Board shall at the close of each fiscal year file with the Minister an annual report upon the affairs of the Board.

Annual report

(2) The Minister shall submit the Board's annual report to the Lieutenant Governor in Council and lay it before the Assembly if it is in session or, if not, at the next session.

Tabling of report

(3) The Board shall provide the Minister with a copy of every actuarial valuation of the pension plan that the Board intends to file with the Pension Commission of Ontario at least forty-five days before it is filed.

Actuarial valuation

(4) The Board shall not file an actuarial valuation with the Pension Commission of Ontario until the Minister advises the Board in writing that he or she agrees that the valuation be filed.

Idem

(5) The Board shall provide the Minister with a copy of every auditor's report on the pension fund within thirty days after the Board receives it.

Auditor's report

(6) The Minister may audit, at his or her own expense, the administration of the pension plan and the management of the pension fund and the Board shall co-operate in the conduct of the audit and shall provide any information required by the auditor.

Minister's audit

(7) The Board shall make such further reports and provide the Minister with such information as the Minister from time to time requires.

Further reports

SCHEDULE 2

TRANSITIONAL VALUATION OF THE PENSION PLAN

1.—(1) In this section and in sections 2 and 3 and subsection 4 (2), "actuarial gain" and "actuarial loss" mean, respectively, the sum, if positive, or the sum, if negative, of,

Initial unfunded liability

- (a) the gain to the pension plan during the period since the review date of the immediately preceding going concern valuation resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based,
- (b) the amount by which the going concern liabilities decrease as a result of an amendment to the plan, and
- (c) the amount by which the going concern liabilities decrease or the going concern assets increase as a result of a change in actuarial

methods or assumptions upon which the current going concern valuation is based, as of the review date for a going concern valuation,

but clause (a), (b) or (c) or any combination thereof shall be counted as a negative in the calculation of the sum if,

(d) the experience of the plan results in a loss rather than a gain,

(e) an amendment increases the going concern liabilities, or

(f) a change in actuarial methods or assumptions results in an increase in going concern liabilities or a decrease in going concern assets, as the case may be;

“going concern assets” means the value of the assets of the pension plan, including accrued and receivable income and the present value of future contributions and investment income, determined on the basis of a going concern valuation;

“going concern liabilities” means the present value of the expenses of the pension plan and the accrued and unaccrued benefits of the plan determined on the basis of a going concern valuation;

“going concern unfunded actuarial liability” means the excess of going concern liabilities over going concern assets;

“going concern valuation” means a valuation of assets and liabilities of the pension plan using methods and actuarial assumptions considered by the actuary who valued the plan to be in accordance with generally accepted actuarial principles and practices for the valuation of a continuing pension plan;

“initial valuation” means the going concern valuation of the pension plan as at the 1st day of January, 1990 required by section 3;

“past service unfunded actuarial liability” means the amount of going concern unfunded actuarial liability that results from the provision of benefits with respect to prior employment for which no benefit was provided at the time of the employment or from an amendment to the pension plan that provides benefits for employment prior to the date of the amendment if the employment had not previously been recognized for purposes of the provision of pension benefits;

1987, c. 35 “review date” means the last date of the period under review in a report required under the *Pension Benefits Act, 1987*;

“solvency assets” means the sum determined in accordance with subsections (2) and (3) of,

(a) the market value of investments held by the pension plan or a value related to the market value by means of an averaging method that stabilizes short-term fluctuations of the market values over a period of not more than five years, plus any cash balances and accrued or receivable income items,

(b) the present value of any special payments required to liquidate any past service unfunded actuarial liability established on or after the 1st day of January, 1988,

(c) the present value of any special payments other than those referred to in clause (b) established on or after the 1st day of Janu-

ary, 1988 that are scheduled for payment within five years after the review date, and

- (d) the present value of future special payments resulting from the initial valuation;

“solvency deficiency” means the excess of the solvency liabilities over the solvency assets;

“solvency gain” means the sum, if positive, of,

- (a) the gain to the pension plan during the period since the review date of the immediately preceding valuation of solvency assets and solvency liabilities resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based, and
- (b) the amount by which the solvency liabilities decrease or the solvency assets increase during the period since the review date of the immediately preceding valuation of solvency assets and solvency liabilities as a result of a change in the actuarial methods or assumptions upon which the current valuation of solvency assets and solvency liabilities is based,

but either of clause (a) or (b) shall be counted as a negative in the calculation of the sum if the experience of the plan results in a loss rather than a gain or if a change in actuarial methods or assumptions results in an increase in solvency liabilities or a decrease in solvency assets, as the case may be;

“solvency liabilities” means an amount that is not less than the liabilities of the pension plan determined as if the plan had been wound up, taking into account liabilities for the adjustment for inflation under the plan and the requirements of section 75 of the *Pension Benefits Act*, 1987. 1987, c. 35

(2) The present values referred to in clauses (b), (c) and (d) of the definition of “solvency assets” in subsection (1) shall be determined on the basis of the assumed interest rate used in determining whether there is a solvency deficiency. Present values re solvency assets

(3) In calculating the solvency assets, if there is no market value for an investment of the pension plan and the investment is issued or guaranteed by a government, the book value of the investment may be used instead of market value. If no market value

(4) This section and sections 2, 3 and 4 prevail over any conflicting provisions of the *Pension Benefits Act*, 1987 or of a regulation made under that Act. Conflicting provisions 1987, c. 35

2.—(1) For each month in the period commencing with the 1st day of January, 1990 and ending with the last day of the month in which the initial valuation is approved by the Pension Commission of Ontario, the Treasurer shall pay to the pension fund from the Consolidated Revenue Fund the amount shown for that month in the Table to this section. Interim payments of unfunded liability

(2) The Treasurer may, with the appropriate adjustment for interest, at any time prepay one or more of the outstanding payments shown in the Table. Prepayment

(3) Payments made under subsection (1) or (2) shall be credited against any special payments that are to be made in the same period to liquidate a going concern unfunded actuarial liability disclosed by the initial valuation, Application of interim payments

and any amount by which the payments made under those subsections are less than the special payments for that period as a result of the initial valuation shall be paid by the Treasurer to the pension fund with the appropriate adjustment for interest from the Consolidated Revenue Fund within fifteen months following the month when the initial valuation is approved by the Pension Commission of Ontario.



Table

Interim Payments of Unfunded Liability

<i>Item</i>	<i>Date of Payment</i>	<i>Amount of Payment</i>
1.	January 1, 1990	\$15,640,000
2.	February 1, 1990	15,710,000
3.	March 1, 1990	15,780,000
4.	April 1, 1990	15,851,000
5.	May 1, 1990	15,922,000
6.	June 1, 1990	15,993,000
7.	July 1, 1990	16,065,000
8.	August 1, 1990	16,136,000
9.	September 1, 1990	16,209,000
10.	October 1, 1990	16,281,000
11.	November 1, 1990	16,354,000
12.	December 1, 1990	16,427,000
13.	January 1, 1991	16,500,000
14.	February 1, 1991	16,574,000
15.	March 1, 1991	16,648,000
16.	April 1, 1991	16,723,000
17.	May 1, 1991	16,798,000
18.	June 1, 1991	16,873,000
19.	July 1, 1991	16,948,000
20.	August 1, 1991	17,024,000
21.	September 1, 1991	17,100,000
22.	October 1, 1991	17,176,000
23.	November 1, 1991	17,253,000
24.	December 1, 1991	17,330,000
25.	January 1, 1992	17,408,000
26.	February 1, 1992	17,486,000
27.	March 1, 1992	17,564,000
28.	April 1, 1992	17,643,000
29.	May 1, 1992	17,721,000
30.	June 1, 1992	17,801,000
31.	July 1, 1992	17,880,000
32.	August 1, 1992	17,960,000
33.	September 1, 1992	18,041,000
34.	October 1, 1992	18,121,000
35.	November 1, 1992	18,202,000
36.	December 1, 1992	18,284,000



Initial
valuation

3.—(1) As soon as practicable after the 31st day of December, 1989, the Board shall cause to be prepared a going concern valuation of the pension plan as at the 1st day of January, 1990, and the valuation shall include the adjustment of pensions for inflation under the plan.

Idem

(2) The initial valuation shall,

(a) comply with this section and section 4;

(b) be delivered by the actuary to the Board and to the Minister and the Treasurer, and shall be filed with the Pension Commission of Ontario by the Board only after the Minister and the Treasurer have advised the Board in writing that they agree that the initial valuation delivered to them be filed; and

(c) for all purposes of the pension plan, determine the going concern unfunded actuarial liability or surplus of the plan as at the 1st day of January, 1990.

(3) Any going concern unfunded actuarial liability disclosed by the initial valuation shall be liquidated by a series of special payments from the Consolidated Revenue Fund to be made over the forty years commencing on the 1st day of January, 1990.

Liability
liquidated

(4) Each special payment mentioned in subsection (3) shall be calculated as a constant percentage of the projected future earnings from employment used to calculate pension benefits during the forty years commencing on the 1st day of January, 1990 of all persons who are members of the pension plan on that date and of those who are expected to join the plan during those forty years.

Calculation
of special
payments

(5) The present value, as at the 1st day of January, 1990, of the full series of special payments shall equal the amount of the going concern unfunded actuarial liability to be liquidated.

Present value
of special
payments

(6) The actuary shall prepare and submit with the initial valuation a schedule showing the dollar amount of each special payment in the first six years of the series and the formula by which the dollar amount of the remaining special payments in the series is determined.

Schedule of
payments

(7) The Treasurer may, at any time, prepay a part or all of any outstanding special payments or may make additional payments to the pension fund to be applied, with appropriate adjustments for interest, as the Treasurer shall direct to reduce the going concern unfunded actuarial liability disclosed by the initial valuation, and every such payment may be paid out of the Consolidated Revenue Fund.

Prepayments
and
additional
payments

(8) Subject to subsection (4),

Consistent
assumptions

(a) the projected future earnings from employment used to calculate pension benefits shall be determined using actuarial assumptions consistent with those made in the initial valuation;

(b) the present value of the series of special payments shall be determined using the interest rate used in the initial valuation; and

(c) all other actuarial assumptions made in the determination of the series of special payments shall be, so far as possible, consistent with actuarial assumptions made in the initial valuation.

4.—(1) A going concern valuation of the pension plan made after the initial valuation shall include the value of the outstanding special payments calculated under section 3 that remain to be made to liquidate the going concern unfunded actuarial liability disclosed by the initial valuation, and the actuary shall prepare and submit with the valuation a schedule showing the amount, determined from the formula mentioned in subsection 3 (6), of each remaining special payment for the next six years or for the period of time for which special payments remain to be made, whichever is shorter.

Subsequent
valuations

Special
payments as
solvency
assets

► (2) For the purpose of determining a solvency gain or solvency deficiency under the pension plan, solvency assets include the present value of future special payments required under section 3.

When special
payments
cease

(3) When the special payments made as a result of the initial valuation and the prepayments and additional payments made under subsection 3 (7) have liquidated the going concern unfunded actuarial liability disclosed by the initial valuation, no further payments shall be made, notwithstanding that the period of forty years used in the initial valuation has not expired.

Determina-
tion of
contribution
rate

► 5.—(1) In the initial valuation the actuary shall state the contribution rate that, in his or her opinion, is required to ensure that the present value of future contributions and the investment income derived from those contributions is at least equal to the present value of the unaccrued cost of the benefits of the pension plan plus the present value of the future expenses of the plan.

Amendment

(2) If the contribution rate stated by the actuary in the initial valuation is materially different from the contribution rate set out in the pension plan, the Lieutenant Governor in Council shall amend the plan to replace the existing contribution rate with that stated in the initial valuation. ►

Bill 66

(Chapter 92
Statutes of Ontario, 1989)

**An Act to revise the
Teachers' Superannuation Act, 1983 and to make
related amendments to the Teaching Profession Act**

The Hon. S. Conway
Minister of Education



<i>1st Reading</i>	October 19th, 1989
<i>2nd Reading</i>	November 27th, 1989
<i>3rd Reading</i>	December 20th, 1989
<i>Royal Assent</i>	December 20th, 1989

Bill 66

1989

**An Act to revise the
Teachers' Superannuation Act, 1983 and to make
related amendments to the Teaching Profession Act**

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SCHEDULE 1

**ONTARIO TEACHERS' PENSION
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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,**Definitions**

“active plan member”, of the pension plan, means a person who is making the contributions required of an active member of the plan;

“Board” means the Ontario Teachers’ Pension Plan Board;

“Minister” means the Minister of Education;

“pension fund” means the pension fund maintained to provide benefits in respect of the Ontario Teachers’ Pension Plan;

“pension plan” means the Ontario Teachers’ Pension Plan.

Pension plan
continued

1983, c. 84

R.S.O. 1980,
c. 490

2.—(1) A pension plan to be known as the Ontario Teachers’ Pension Plan continues the pension plan set out in the *Teachers’ Superannuation Act, 1983* and the regulations thereunder, including the benefits provided under the *Superannuation Adjustment Benefits Act* in relation to the pensions provided under the *Teachers’ Superannuation Act, 1983*.

Defined
benefits plan
1987, c. 35

(2) The pension plan shall be a defined benefit plan within the meaning of the *Pension Benefits Act, 1987*.

Plan
documents

(3) The terms of the pension plan are as set out in Schedule 1 to this Act and in such other governing documents as may be created or adopted under this Act or that Schedule.

Adminis-
trator
1987, c. 35
R.S.C. 1952,
c. 148

3. The Board shall administer the pension plan and manage the pension fund in accordance with this Act, the *Pension Benefits Act, 1987* and the *Income Tax Act (Canada)*.

Pension fund
1983, c. 84

4. The Teachers’ Superannuation Fund established under the *Teachers’ Superannuation Act, 1983* is continued as the pension fund maintained to provide benefits in respect of the pension plan.

Contributions
by the
Crown

5.—(1) The Treasurer shall pay from the Consolidated Revenue Fund an amount equal to contributions under the pension plan payable by the Minister.

Payments re
transitional
valuation

(2) The Treasurer shall make the payments required under Schedule 2.

Deficiency

(3) If in a year the amount of cash and assets capable of sale in the pension fund is insufficient to meet the payments out of the fund in the year after the sale of the assets capable of sale, the Treasurer shall pay from the Consolidated Revenue Fund an amount sufficient to make up the deficiency.

(4) Subsection (3) ceases to apply if an agreement mentioned in subsection 11 (1) is in force. Limitation

6.—(1) The Teachers' Superannuation Commission is continued under the name of the Ontario Teachers' Pension Plan Board and is constituted as a corporation without share capital. Board established

(2) The *Corporations Act* does not apply with respect to the Board. Application of R.S.O. 1980, c. 95

7. The composition of the Board shall be as is set out in the pension plan. Composition of the Board

8. The powers and duties of the Board shall be those set out in the pension plan. Powers, etc., of the Board

9.—(1) The Lieutenant Governor in Council by order may amend the pension plan as set out in Schedule 1 and, without restricting the generality of the foregoing, may, Amendment of the plan

- (a) determine the methods or formulas to be used to calculate any pension or other benefit, refund or interest rate provided under the plan;
- (b) increase or prospectively reduce, eliminate or modify any pension or other benefit, refund or interest rate set out in the plan;
- (c) vary or provide a method for determining a variation in the rate of contributions required to be paid under the plan;
- (d) extend, modify or restrict the conditions upon which persons may become members of the plan;
- (e) regulate the administration of the plan;
- (f) determine the composition of the Board and its powers and duties.

(2) Before making an order amending the pension plan, the Lieutenant Governor in Council shall give the Ontario Teachers' Federation and each of its affiliates forty-five days' notice of the amendment. Notice

(3) To the extent that an amendment to the pension plan conflicts with the *Pension Benefits Act, 1987* in a matter in which the conflict is not authorized by this Act or Schedule 1, the amendment is void. Idem 1987, c. 35

Application of R.S.O. 1980, c. 446 (4) The *Regulations Act* does not apply with respect to an order amending the pension plan.

Tabling of orders (5) The Minister shall lay an order made under subsection (1) before the Assembly if it is in session or, if not, at the next session.

Agreement for joint responsibility **10.**—(1) The Lieutenant Governor in Council may enter into an agreement with the representatives of active plan members which provides for the following matters:

1. The joint management of the plan by the Crown and representatives of the active plan members.
2. The sharing of entitlement to surplus under the plan and of liability for deficiencies in the pension fund by the Crown, the employers who contribute under the plan and the active plan members.
3. Prior consultation between the Crown and representatives of the active plan members concerning any change in benefits under the plan or in the rate or amount of contributions to the pension fund by the Crown or by active plan members.
4. Mediation procedures to be used if, after consultation, the Crown and the representatives are unable to agree upon a change in benefits or in the rate or amount of contributions.
5. The terms upon which the Lieutenant Governor in Council shall exercise the powers described in section 9.
6. Such other matters as the Lieutenant Governor in Council by order may provide.

Idem (2) If the Lieutenant Governor in Council enters into an agreement as described in subsection (1), the agreement may provide that the Lieutenant Governor in Council shall exercise the powers set out in section 9 of this Act in accordance with the terms of the agreement.

Agreement for member responsibility **11.** The Lieutenant Governor in Council, by order, shall repeal Schedule 1 upon the Crown entering into an agreement with the representatives of members of the plan that provides,

- (a) that the pension plan will continue;

- (b) that the entitlement to surplus and the liability for deficiencies in the pension fund is permanently assumed by the active plan members;
- (c) that the liability of the Crown to contribute under the plan is limited to a specified amount or to a specified percentage of member contributions under the plan;
- (d) that the members may amend the plan, subject to the restrictions described in clauses (b) and (c).

12.—(1) In this section,

Transfer of
pension funds

“Superannuation Adjustment Fund account” means the account maintained in the Superannuation Adjustment Fund under the *Superannuation Benefits Act* in respect of the Teachers’ Superannuation Fund;

R.S.O. 1980,
c. 490

“Teachers’ Superannuation Fund” means the Teachers’ Superannuation Fund under the *Teachers’ Superannuation Act, 1983*.

1983, c. 84

(2) As of the 31st day of December, 1989, the Treasurer shall pay to the Superannuation Adjustment Fund interest at the rate and upon the terms determined by the Lieutenant Governor in Council on the cash balances that from time to time stood to the credit of the Superannuation Adjustment Fund account during the period from the 1st day of April, 1989 to the 31st day of December, 1989.

Payment of
accrued
interest

(3) Interest payable by the Treasurer on assets in the Superannuation Adjustment Fund account held on the 1st day of April, 1989 shall be accrued to the 31st day of December, 1989 and paid as of that date despite a later time for payment specified in any instrument that provides for payment of the interest, and the payment made to the account reduces the liability of the Treasurer under the instrument for interest by the amount paid.

Idem

(4) Payments under subsections (2) and (3) shall be made from the Consolidated Revenue Fund.

Payment
from
Consolidated
Revenue
Fund

(5) As of the 31st day of December, 1989, the Treasurer shall transfer from the Superannuation Adjustment Fund account to the Teachers’ Superannuation Fund the assets and liabilities in the Superannuation Adjustment Fund account, including assets transferred and payments made to that account under this section, and, as of that date, the Superan-

Transfer
from the
Superan-
nation
Adjustment
Fund

nuation Adjustment Fund account ceases to exist in the Consolidated Revenue Fund.

Issuance of
debentures

(6) The transfer of assets under subsection (5), other than debentures, shall be made by the issuance to the Teachers' Superannuation Fund of debentures of the Province of Ontario that are equal to the amount of the assets and that, in the Treasurer's opinion, provide for the payment of principal and interest on terms substantially equivalent to those on which the assets are held in the Superannuation Adjustment Fund account on the 31st day of December, 1989.

Idem

(7) Debentures referred to in subsection (6) may be in such amounts and upon such terms as to the payment of principal and interest, maturing at such time or times and either with or without the privilege of prepayment of the whole or any part of the principal amount of any such debenture as, in the Treasurer's opinion, meet the requirements of this section, and any debenture may provide that it is not assignable or transferable.

Transfer of
assets

(8) As of the 1st day of January, 1990, the Treasurer shall transfer to the custody and control of the pension fund the assets which are held by the Teachers' Superannuation Fund on the 31st day of December, 1989.

Transfer of
liabilities

(9) As of the 1st day of January, 1990, all liabilities of the Teachers' Superannuation Fund become liabilities of the pension fund.

Investments
authorized
1987, c. 35

(10) Despite the *Pension Benefits Act, 1987* and the regulations thereunder, the receipt and holding by the Board of debentures issued or transferred under this section shall not be considered imprudent or unreasonable or contrary to that Act and the regulations thereunder, and the nature, amount and terms of the debentures may be taken into account by the Board and any committee of the Board in determining future investments of the assets of the pension plan.

Non-
application of
1987, c. 35,
s. 82

(11) Section 82 of the *Pension Benefits Act, 1987* does not apply to the transfers described in this section.

Temporary
account
authorized

(12) During the period from the 31st day of December, 1989 to the 30th day of June, 1990, the Treasurer may establish outside the Consolidated Revenue Fund one or more accounts for such period as the Treasurer considers advisable to facilitate the orderly transfer of assets to the pension fund and to facilitate administration of the pension plan.

13.—(1) The *Teachers' Superannuation Act, 1983*, as it reads on the 31st day of December, 1989, continues to apply to the computation or payment of every allowance, annuity, pension or deferred pension or payment to the payment of which a person has become entitled under that Act before that date, and continues to apply in respect of every person who, within the meaning of that Act, has ceased to be a contributor on or before that date and is entitled to a deferred allowance under that Act.

Continued
application
1983, c. 84

(2) The *Teachers' Superannuation Act, 1983*, as it reads on the 31st day of December, 1989, continues to apply in respect of every person who is entitled to a survivor benefit, death benefit, right or allowance with respect to contributions made by a person referred to in subsection (1).

Idem

14. Every allowance, pension or deferred pension or other payment under the *Teachers' Superannuation Act, 1983* or a predecessor Act or under the *Superannuation Adjustment Benefits Act*, including any payment authorized to be made from the Consolidated Revenue Fund, that, before the 1st day of January, 1990, a person is receiving, is entitled to receive, or is entitled to receive with the payment thereof deferred until the year 1990 or later, shall be paid out of the pension fund in accordance with the Act under which entitlement to the payment arose.

Payment of
pensions,
predecessor
Acts
1983, c. 84
R.S.O. 1980,
c. 419

15. All agreements entered into before the 31st day of December, 1989 by the Teachers' Superannuation Commission under the authority of clause 75 (1) (g) of the *Teachers' Superannuation Act, 1983* are continued and expire on the 30th day of June, 1990.

Certain
agreements
continued

16.—(1) Section 3 of the *Teaching Profession Act*, being chapter 495 of the Revised Statutes of Ontario, 1980, is amended by striking out "and" at the end of clause (d), by adding "and" at the end of clause (e) and by adding thereto the following clause:

- (f) to represent all members of the pension plan established under the *Teachers' Pension Act, 1989* in the administration of the plan and the management of the pension fund.

1989, c. 92

(2) Section 9 of the said Act is amended by adding thereto the following clause:

- (d) act as the representative of the members of the pension plan established under the *Teachers' Pension*

1989, c. 92

Act, 1989 including carrying out the following functions:

1. Appointing persons to be members of the Ontario Teachers' Pension Plan Board created under that Act.
2. Entering into an agreement with the Crown as described in section 10 or 11 of that Act.
3. Negotiating, agreeing to or directing amendments to the plan as permitted under that Act or an agreement entered into under that Act.
4. Entering into an agreement on behalf of the Federation to indemnify a person appointed under paragraph 1 against any costs sustained with respect to legal proceedings arising out of an act or omission done in the execution of that person's duties as a member of the Ontario Teachers' Pension Plan Board.

Repeals

17. The following are repealed on the 1st day of January, 1990:

1. The *Teachers' Superannuation Act, 1983*, being chapter 84.
2. The *Teachers' Superannuation Amendment Act, 1986*, being chapter 13.
3. The *Teachers' Superannuation Amendment Act, 1987*, being chapter 19.
4. Section 75 of the *Family Law Act, 1986*, being chapter 4.
5. Section 68 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64.

Commence-
ment

18.—(1) This Act, except Schedule 1, comes into force on the 31st day of December, 1989.

Idem

(2) Schedule 1 comes into force on the 1st day of January, 1990.

Short title

19. The short title of this Act is the *Teachers' Pension Act, 1989*.

SCHEDULE 1

ONTARIO TEACHERS' PENSION PLAN

PART I

INTERPRETATION

1.—(1) In this Schedule,

Definitions

“active member” means a person employed in education who is making contributions under the plan and includes a person receiving long-term income protection benefits under an agreement approved by the employer and by whom or on whose behalf contributions are being made;

“active member on LTIP” means an active member as described in section 6;

“administrator” means the board of governors;

“average salary”, of a member, means the average salary determined in accordance with section 15;

“board of education” has the same meaning as “board” in subsection 1 (1) of the *Education Act*;

R.S.O. 1980,
c. 129

“child” has the same meaning as in subsection 1 (1) of the *Family Law Act*, 1986;

1986, c. 4

“date of disability”, of an active member on LTIP, means the date on which the member ceases to be employed in education as a result of the disability;

“dependent child”, of a deceased member, means a child who,

(a) is less than eighteen years of age,

(b) is eighteen or more years of age but less than twenty-five years of age and is in full-time attendance at a school or university, having been in such attendance substantially without interruption since the child reached eighteen years of age or since the member died, whichever occurred later, or

(c) is a child other than a child described in clause (b), is eighteen or more years of age and is disabled, having been disabled without interruption since the time the child reached eighteen years of age or since the member died, whichever occurred later;

“designated organization” means an organization designated under subsection 119 (2);

“designated private school” means a school designated under subsection 119 (1);

“employed in education” means employed as described in section 2, 7, 8 or 9;

“member” means a person who, as a result of his or her employment in education, is entitled to benefits or to a refund of contributions under the pension plan;

"re-employed pensioner" means a member receiving a retirement pension who becomes employed in education;

"school year" means the twelve-month period that begins on the 1st day of September;

1987, c. 35 "spouse" has the same meaning as in section 1 of the *Pension Benefits Act*, 1987;

"standard interest rate" means the interest rate determined under section 89;

R.S.C. 1985, c. C-8 "Year's Maximum Pensionable Earnings", in relation to a year, means the Year's Maximum Pensionable Earnings prescribed under the *Canada Pension Plan*.

Qualification
as a teacher

(2) A person is considered to be qualified as a teacher,

- (a) if the person holds a valid certificate of qualification or a letter of standing as a teacher in Ontario; or
- (b) if a board of education has a letter of permission granted by the Minister of Education in respect of the person.

Employment

(3) A person is considered to be employed,

- (a) full-time, if the person is required to work throughout each work day of a year or of a session; and
- (b) part-time, if the person is required to work on a regular but not full-time basis.

Idem

(4) A person is considered to be employed on an occasional basis as a teacher and not part-time if the person is an occasional teacher within the meaning of section 1 of the *Education Act*.

R.S.O. 1980, c. 129

PART II

PARTICIPATION

A. Membership in the Plan

Eligibility for
membership

2.—(1) Every person is eligible to be an active member of the pension plan who is qualified as a teacher and is employed,

- (a) as a teacher in a school within the meaning of subsection 1 (1) of the *Education Act*;
- (b) as a teacher in a school outside Ontario under a teacher exchange system authorized by the Minister of Education;
- (c) as a teacher by the minister of a ministry of the Government of Ontario;
- (d) as a teacher in a school or a class operated by the Metropolitan Toronto and Region Conservation Authority; or
- (e) by a board of education.

Idem

(2) Every person is eligible to be an active member of the pension plan who is qualified as a teacher and is employed,

- (a) as a teacher in a designated private school; or
- (b) in a designated capacity by a designated organization.

(3) No person is eligible to be an active member of the pension plan, Exception

- (a) if the person is regularly employed outside Ontario and is performing services in Ontario under a teacher exchange system approved by the Minister of Education;
- (b) if the person contributes to a pension fund to which the Crown contributes, other than the *Canada Pension Plan*, the *Quebec Pension Plan* or the fund established under this plan; or R.S.C. 1985, c. C-8
R.S.Q. 1977, c. R-9
- (c) if the person is seventy-one or more years of age.

3.—(1) Every person employed as described in subsection 2 (1) full-time or part-time becomes an active member of the plan on the later of, Commencement of membership

- (a) the 1st day of January, 1990; or
- (b) the date the employment contract begins.

(2) Subject to subsection 5 (1), every person employed as described in subsection 2 (2) full-time or part-time becomes an active member of the plan on the day that is the latest of, Idem

- (a) the 1st day of January, 1990;
- (b) the date the employment contract begins; or
- (c) the date the designation of the private school or the organization is effective.

(3) Subject to subsection 4 (1), every person employed in education on an occasional basis may elect to become an active member on or after the person's first day of employment in a school year. Idem

(4) Despite subsections (1), (2) and (3), every member receiving a retirement pension under the pension plan or a predecessor Act who becomes re-employed in education becomes an active member on the earlier of, Commencement of membership, re-employed pensioner

- (a) the member's ninety-sixth day of employment in a school year; or
- (b) the member's twenty-first day of employment in education in a school year following three school years during each of which the member has been re-employed for fewer than ninety-six days.

(5) For the purpose of clause (4) (b), the member's employment in education, if any, before the 1st day of January, 1990 shall not be considered. Idem

(6) A member receiving a retirement pension under the pension plan or a predecessor Act who becomes re-employed in education may elect to become an active member immediately upon becoming re-employed. Idem

4.—(1) A person employed in education on an occasional basis who elects to become an active member continues to be an active member in any year in which he or she is employed in education after making the election unless the person has terminated membership under Part IV. Election re occasional employee

Obligations	(2) An active member described in subsection (1) shall inform the member's employer of his or her active membership whenever he or she becomes re-employed in education after making the election.
Election re designated private schools, etc.	5.—(1) A person employed at a designated private school or a designated organization on the date the designation becomes effective may elect not to become an active member of the plan.
Time for election	(2) An election under this section is not effective unless delivered in writing to the governing body of the designated private school or designated organization and to the administrator, <ul style="list-style-type: none"> (a) not later than three months after the effective date of designation for the private school or organization, if the person is qualified as a teacher when the designation takes effect; or (b) not later than three months after the date the person becomes qualified as a teacher, if the person is not so qualified on the effective date of designation for the private school or organization.
Active member on LTIP	6.—(1) An active member who ceases to be employed in education because of a disability and who is receiving payments under a long term income protection agreement approved by the administrator or the member's employer or former employer is entitled to continue as an active member of the plan.
Eligibility	(2) A person's eligibility to be an active member under this section ceases on the day that is the earlier of, <ul style="list-style-type: none"> (a) the normal retirement date of the member; or (b) the day the member begins receiving a pension under the pension plan.
Idem	(3) The active membership of a person described in subsection (1) continues only if the contributions required from an active member under the pension plan are made by or on behalf of the person.
Definition	(4) In subsection (1), "agreement" means an agreement to provide long term income protection in the event of a member's long term disability that is entered into by an insurer within the meaning of section 1 of the
R.S.O. 1980, c. 218	<i>Insurance Act</i> and, <ul style="list-style-type: none"> (a) the Minister of Education; (b) a board of education;
R.S.O. 1980, c. 495	(c) the Ontario Teachers' Federation established under the <i>Teaching Profession Act</i> ;
R.S.O. 1980, c. 464	(d) an affiliate within the meaning of section 1 of the <i>School Boards and Teachers Collective Negotiations Act</i> ; or
	(e) an authority approved by the administrator.
Active membership, university faculty	7.—(1) A member who, during an absence as defined in subsection 94 (1), becomes employed on the staff of a faculty of education of an Ontario university on or after the 1st day of January, 1990 is an active member of the plan.
Limitation	(2) A person is eligible for active membership under this section for a maximum of five school years.

8.—(1) A person who, on the 1st day of January, 1990, is qualified as a teacher and is employed full-time on the staff of a faculty of education of an Ontario university is an active member of the plan as long as the person continues in full-time or part-time employment at such a faculty.

Transitional
re
universities

(2) A person who, on the 1st day of January, 1990, is qualified as a teacher and is employed part-time on the staff of a faculty of education of an Ontario university is an active member of the plan as long as the person continues either part-time or full-time employment at such a faculty.

Idem,
part-time
employee

9.—(1) This section applies with respect to a person who,

Transitional
re Ryerson,
CAATs

(a) is qualified as a teacher and is employed by Ryerson Polytechnical Institute; or

(b) was deemed, under a predecessor of this Act, to be employed in education by a college of applied arts and technology.

(2) A person who, on the 1st day of January, 1990, has been employed full-time by Ryerson Polytechnical Institute or a college of applied arts and technology continuously since the 1st day of September, 1984 is an active member of the pension plan as long as the person continues in full-time employment either at Ryerson or at such a college.

Idem, full-
time
employee

(3) A person who, on the 1st day of January, 1990, has been employed part-time by Ryerson Polytechnical Institute or a college of applied arts and technology continuously since the 1st day of September, 1984 is an active member of the pension plan as long as the person continues in part-time or full-time employment either at Ryerson or at such a college.

Idem,
part-time
employee

B. Credit for Service

10.—(1) An active member receives one year of credited service for working the number of hours or days normally worked during a school year by a full-time employee in the occupational group in which the member is employed.

Credited
service

(2) An active member receives credited service for part of a year in the proportion that the number of hours or days worked by the member during the school year bears to the number of hours or days normally worked during a school year by a full-time employee in the occupational group in which the member is employed.

Idem, partial
year

(3) The amount of credited service of an active member on LTIP in a year is calculated using the formula,

Amount of
credited
service

$$A \times (B / C)$$

in which,

"A" is the amount of contributions for the year made by or on behalf of the member,

"B" is the number of hours or days normally worked during a school year by a full-time employee in the occupational group in which the member is employed or, in the case of a member who is no longer employed in education, was last employed before the date of disability, and

"C" is the amount of contributions normally made by the full-time employee described in the definition of "B" for the period described

in that definition, calculated at the salary used to calculate the amount of the member's contributions.

- Limitation (4) A person shall not receive credited service for employment unless contributions in respect of the employment are made by or on behalf of that person.
- Idem (5) No person is entitled to receive more than one year of credited service in respect of the person's employment during one school year.
- Idem (6) Subject to subsection (7), no person is entitled to accumulate more than thirty-five years of credited service under the plan.
- Exception (7) A member who accumulates thirty-five years of credited service may continue to accumulate credited service until the month in which he or she reaches the age which, when added to the member's credited service, equals ninety.
- Partial year 11.—(1) The length of a member's credited service determined under this section applies for the purpose of determining the member's entitlement to a benefit but does not apply for the purpose of calculating the amount of the benefit.
- Idem (2) If an active member accumulates more than twenty days but less than one year of credited service as determined under section 10 during one school year, the member's credited service shall be considered to be credited service for the whole year.
- Idem (3) If a member described in subsection (2) receives a pension during the school year, the member shall receive credited service only for those months during which the member does not receive a pension.
- Idem (4) If a member described in subsection (2) becomes employed in education for the first time on or after the 1st day of January, 1990, the member shall receive credited service only for that portion of the school year during which the member is an active member.
- Idem (5) Subsection (2) does not apply with respect to credited service purchased by a member for a period when the member was not employed in education.

C. Calculation of Pensionable Salary

- Pensionable salary 12.—(1) A member's pensionable salary for a school year is the remuneration paid to the member during the school year respecting employment in education and excludes,
- (a) remuneration for services other than for employment in education;
 - (b) perquisites related to employment;
 - (c) payments related to accumulated sick leave or other employment benefit credits;
 - (d) payments related to retirement or termination of employment; or
 - (e) payments to reimburse the member for expenses incurred during the course of employment.
- Idem (2) Pensionable salary excludes the amounts described in clauses (1) (a) to (e) whether paid under a contract or gratuitously by an employer.

(3) The pensionable salary of a member who receives board or lodging related to employment in education shall be deemed to be such amount, having regard for the value of the board or lodging, as is determined by the administrator. Idem

(4) The pensionable salary of a member who receives a refund of contributions under section 28 (overpayments) shall be reduced in the proportion that the amount of the refunded contributions bears to the amount of contributions originally paid for the year. Idem

13.—(1) Subject to subsection (2), the pensionable salary of an active member on LTIP is the amount of his or her pensionable earnings, expressed as an annualized amount, for the last school year before the member began receiving LTIP benefits. Pensionable salary re active member of LTIP

(2) The pensionable salary for a school year for an active member on LTIP whose contribution is made under subsection 21 (2) shall be considered to be the amount used to calculate the amount of the contribution. Idem

14.—(1) The pensionable salary of a member who purchases credited service under section 94, 95 or 96 for an absence or break in service is the amount of remuneration that, in the opinion of the member's employer, the member would have earned had he or she not taken the absence or break. Pensionable salary re purchases of credit

(2) The pensionable salary of a member who purchases credited service under section 103 is the amount of the member's remuneration for employment during the applicable period. Idem

15.—(1) The average salary of a member, Average salary

(a) with more than five years' credited service is the average of the member's annual pensionable salary for the five school years during which it was highest; and

(b) with five years' or less credited service is the average of the member's annual pensionable salary.

(2) For the purpose of determining the average salary of a member employed more than twenty days but less than an entire school year or an active member on LTIP whose LTIP payments are based upon a less than full-time salary, the annual pensionable salary of the member is calculated using the formula, Part-time or occasional employee

$$(A / B) \times (C - D)$$

in which,

"A" is the amount of the member's pensionable salary for the school year,

"B" is the lesser of,

(a) the number of days of credited service accumulated by the member during the school year, and

(b) the number of days that the administrator determines are normally worked during a school year by a full-time employee in the same occupational group as the member,

"C" is the number of days worked during a school year by a full-time employee in the same occupational group as the member, and

"D" is the sum of the number of days in the school year before the member first becomes employed in education and the number of days in the school year after the member ceases to be employed in education.

Restriction (3) If a member purchases credited service for all or part of a year, the member's average salary may be calculated using his or her salary for that year only if the member,

- (a) purchases credited service for the whole year; or
- (b) purchases credited service for part of the year and is employed in education for the rest of it.

D. Transitional

Transitional re membership **16.—**(1) Every person who has credit in the Teachers' Superannuation Fund on the 31st day of December, 1989 and who is not entitled to an allowance under a predecessor of this Act becomes an active member of the pension plan upon completing one day of employment in education on or after the 1st day of January, 1990.

Idem, active member on LTIP 1983, c. 84 (2) Every person who was making contributions or on whose behalf contributions were being made on the 31st day of December, 1989 under an agreement referred to in section 4 of the *Teachers' Superannuation Act, 1983* or under a predecessor of that section is considered to be an active member on LTIP.

Transitional re credited service **17.** Every active member shall be considered to have accumulated credited service under the pension plan in an amount equal to the credit for service that he or she had accumulated under a predecessor of this Act.

Re-employed pensioners **18.** A re-employed pensioner making contributions under the pension plan or a predecessor of this Act on or after the 1st day of September, 1989 up to the 1st day of January, 1990 is entitled to a refund of contributions, if any, made in respect of the first ninety-five days or less of employment during that period.

PART III

CONTRIBUTIONS

A. Member Contributions

Amount of member's contribution R.S.C. 1985, c. C-8 R.S.Q. 1977, c. R-9 **19.—**(1) Every active member who is required to contribute to the *Canada Pension Plan* or to the *Quebec Pension Plan* shall contribute for a year,

- (a) 8.9 per cent of that portion of the member's pensionable salary below the amount of the Year's Basic Exemption as prescribed under the *Canada Pension Plan*;
- (b) 7.1 per cent of that portion of the member's pensionable salary from the amount of the Year's Basic Exemption up to and including the amount of the Year's Maximum Pensionable Earnings; and
- (c) 8.9 per cent of that portion of the member's pensionable salary that exceeds the amount of the Year's Maximum Pensionable Earnings.

(2) Every active member who is not required to contribute to the *Canada Pension Plan* or to the *Quebec Pension Plan* shall contribute 8.9 per cent of the member's pensionable salary for the year.

Idem

(3) For the purpose of calculating the contributions of a member whose pensionable salary is less than \$10,000, the member's pensionable salary shall be deemed to be \$10,000.

Pensionable salary

20.—(1) The employer of an active member shall deduct the amount the member is required to contribute under section 19 from the salary paid to the member.

Collection of member contributions

(2) An employer shall deliver to the administrator or deposit to the account of the pension fund on or before the last day of each month in which a member's salary is paid the amount deducted for the member's contribution.

Transfer of amount deducted

(3) An employer shall pay interest on amounts in arrears from the date the payment is due to the date it is made, calculated at the standard interest rate plus 4 per cent.

Interest payable

(4) An employer shall make such reports to the administrator as the administrator requires in respect of member contributions.

Report to administrator

21.—(1) The amount of the required contribution for an active member on LTIP is,

Contributions re active members on LTIP

(a) 6.9 per cent of the pensionable salary of a member who becomes disabled before the 1st day of January, 1991; and

(b) 8.9 per cent of the pensionable salary of a member who becomes disabled after the 31st day of December, 1990.

(2) An active member on LTIP may elect to increase his or her required contribution by calculating it using an amount selected by the member that is,

Inflation-adjusted pensionable salary

(a) not less than the member's pensionable salary; and

(b) not greater than the amount of the member's pensionable salary after it is adjusted for inflation under section 80 as if it were a pension.

(3) An active member on LTIP is required to give notice to his or her employer or former employer of an election under subsection (2) before the 30th day of November in the year to which it applies.

Restriction re election

(4) An active member on LTIP shall give notice on the first day of each school year to his or her employer or former employer that the member continues to be an active member on LTIP.

Notice of status

22. The contributions required under subsection 21 (1) from an active member on LTIP who is receiving benefits under a long term income protection plan established under the *Public Service Act* shall be paid on behalf of the member by the Minister.

Minister's payments re active member on LTIP
R.S.O. 1980, c. 418

23.—(1) The required contribution for an active member on LTIP shall be paid to the person who was his or her employer on the date of disability.

Collection re active member on LTIP

Idem	(2) Payments under subsection (1) must be made on or before the fifteenth day of the month following the month in which each payment under the long term income protection agreement is made to the member.
Increased contributions	(3) Despite subsection (2), if an active member on LTIP makes an election under subsection 21 (2), the member shall pay a lump sum before the 30th day of November in the year for which the election is made equal to the amount of increase in the member's required contributions for the year that results from the election.
Transfer of contribution	(4) Subject to subsection (5), an employer to whom a payment in respect of an active member on LTIP is to be made under this section shall, whether or not the payment is made, deliver to the administrator on or before the last day of each month in which the member's LTIP payment is required the amount of the member's required contribution.
Idem	(5) An employer who receives a payment under subsection (3) shall deliver it to the administrator or deposit it to the account of the pension fund not later than the 31st day of December in the year in which the employer receives it.
Interest payable	(6) Interest is payable on payments in arrears made to the employer or by the employer from the date the payment is due to the date it is made, calculated at the standard interest rate plus 4 per cent.
Cause of action	(7) An employer may maintain an action for the recovery of an amount paid to the administrator under subsection (4) if the employer has not received the corresponding payment of required contributions for an active member on LTIP.

B. Employer Contributions

Liability for contributions	24.— (1) Employer contributions in respect of an active member employed as described in subsection 2 (1) shall be paid by the Minister.
Idem	(2) Subsection (1) does not apply with respect to any contribution in relation to which the member is required under this pension plan to make the contribution that would otherwise be made by the Minister.
Idem	(3) Employer contributions in respect of an active member employed as described in subsection 2 (2) or section 7, 8 or 9 shall be paid by the employer of the member.
Idem	(4) Employer contributions in respect of an active member on LTIP shall be paid by the person making the employer contributions in respect of the member immediately before the date of disability.
Contributions by the Minister	25.— (1) The Minister shall contribute in each year an amount equal to the required contributions made during the year before the preceding year by or on behalf of those members for whom the Minister is required to make employer contributions.
Idem, active members on LTIP	(2) In addition to the amount required under subsection (1), the Minister shall contribute 4 per cent of the pensionable salaries of active members on LTIP who become disabled before the 1st day of January, 1991.
Due date 1987, c. 35	(3) The Minister's contribution is due on the 1st day of January in each year and not as required under the <i>Pension Benefits Act, 1987</i> .
Interest payable	(4) Interest on the Minister's contribution is payable for the period beginning on the 1st day of June of the year that was two years before the

date on which a payment is due and ending on the day before the payment is made, calculated at the standard interest rate in effect on that 1st day of June.

(5) Interest payable in respect of a period before the 1st day of January, 1990 shall be calculated, Idem,
transitional

(a) up to that date, in accordance with the *Teachers' Superannuation Act*, 1983, c. 84 1983;

(b) on and after that date, at the standard interest rate in effect on the 1st day of January, 1990.

(6) The Minister shall deliver contributions to the administrator or deposit them to the account of the pension fund. Delivery

(7) To reduce the time between the date of payment mentioned in subsection (3) and the payment of contributions by or on behalf of those members for whom the Minister is required to make employer contributions, the Lieutenant Governor in Council may, despite subsections (1) and (4), by order require the Minister to make payments for such number of months in the preceding year as are specified in the order in respect of contributions in those months by or on behalf of those members for whom the Minister is required to make employer contributions. Order of
Lieutenant
Governor in
Council

(8) An order made under subsection (7) shall revise the period of time mentioned in subsection (1) in respect of which contributions by the Minister are computed so that it reflects the additional contributions required to be made by the Minister. Idem

(9) An order under subsection (7) shall adjust the date from which interest is to be calculated under subsection (4) to reflect the reduced time between the last month in which contributions are made by or on behalf of those members for whom the Minister is required to make employer contributions and the month when the Minister pays an amount equal to those contributions. Idem

26.—(1) An employer shall contribute in each month an amount equal to the required contributions made during the month by or on behalf of those members for whom the employer is required to make employer contributions. Contributions
by employers

(2) An employer's contribution is due on the last day of the month. Due date

(3) Interest on an employer's contribution is payable from the date the payment is due to the date it is made, calculated at the standard interest rate plus 4 per cent. Interest
payable

(4) An employer shall deliver contributions to the administrator or deposit them to the account of the pension fund. Delivery

C. Refund of Overpayments

27. The administrator shall refund contributions or other payments made in error or not permitted under the pension plan, together with interest, if the administrator received the contributions or other payments. Refund error

28.—(1) An active member who works a greater number of days in a school year than are normally worked by a full-time employee in the occupational group in which the member is employed is entitled to a refund of contributions in accordance with this section. Overpayments

Idem 1987, c. 35 (2) Despite section 79 of the *Pension Benefits Act, 1987*, the person required to make employer contributions in respect of a member described in subsection (1) is entitled to a refund of employer contributions in accordance with this section, if the employer contributions have been paid.

Amount of refund (3) The amount of the refund of contributions is calculated using the formula,

$$A \times [1 - (B / C)]$$

in which,

“A” is the amount of the member’s required contributions for employment in education during the school year,

“B” is the number of days normally worked in the school year by a full-time employee in the occupational group in which the member is employed, and

“C” is the number of days worked in the school year by the member for which the member’s contributions have been made.

Interest payable (4) Interest is payable on a refund of contributions from the last day of the school year until the refund is paid.

Lump sum (5) A refund of contributions shall be paid as a lump sum.

Refund, re-employed pensioners 1987, c. 35 1983, c. 84 29. Despite subsection 64 (4) of the *Pension Benefits Act, 1987*, a person described in subsection 46 (3) of the *Teachers’ Superannuation Act, 1983* who became re-employed in education for less than twenty days between the 1st day of September, 1986 and the 31st day of August, 1989 is entitled to the refund described in that section.

PART IV

PAYMENTS UPON TERMINATION OF MEMBERSHIP

A. Vesting

Vesting of benefits 30.—(1) Upon accumulating two years of credited service any part of which relates to employment on or after the 1st day of January, 1987, a member is entitled to a deferred pension in respect of credited service after that date.

Idem (2) A member is entitled to a deferred pension upon accumulating ten years of credited service.

Payment of deferred pension (3) A deferred pension shall be calculated and paid in accordance with Part V.

Limit (4) No person is entitled to more than one deferred pension in respect of the same period of employment.

Entitlement on termination of membership 31.—(1) A member who is not entitled to a deferred pension is entitled upon ceasing to be employed in education to terminate his or her membership in the plan by taking a refund of contributions in accordance with sections 33 and 34.

Idem (2) A member who is entitled to a deferred pension is entitled upon ceasing to be employed in education to terminate his or her membership in

the plan by taking a refund described in section 35 or by a transfer of funds and a refund of excess contributions, if applicable, made in accordance with section 36.

(3) Despite an earlier time required under the *Pension Benefits Act, 1987* for paying refunds, a member is entitled to a refund of contributions ninety days after the date the member ceases to be employed in education, if no contributions are paid or required to be paid by or on behalf of the member. Limitation
1987, c. 35

(4) Subsection (3) applies with necessary modifications with respect to a refund of contributions payable to a person who ceased to be employed in education before the 1st day of January, 1990. Idem,
transitional

32. A person who terminates his or her membership is not entitled to the rights and does not enjoy the privileges of a former member under the *Pension Benefits Act, 1987*. Rights of
former
members

B. Refunds and Transfers

33. A member who is not entitled to a deferred pension in respect of employment on or after the 1st day of January, 1987 is entitled to a refund of the member's contributions in respect of that employment together with interest thereon. Refund re
post-1986
contributions

34.—(1) A member who has less than ten years of credited service and who is not entitled to a deferred pension relating to employment before the 1st day of January, 1987 is entitled to a refund in the amount of the member's contributions in respect of credited service before the 1st day of January, 1987 together with interest thereon. Refund re
pre-1987
contributions

(2) A member with less than ten years credited service who ceases to be employed in education in or after the year in which the member reaches sixty-five years of age is entitled to a refund equal to twice the amount of the member's contributions in respect of credited service before the 1st day of January, 1987 together with interest thereon. Refund at or
after sixty-
five years of
age

35.—(1) This section applies with respect to a member entitled to a deferred pension relating to employment before the 1st day of January, 1987. Refund re
pre-1987
deferred
pension

(2) A member who ceases to be employed in education before reaching forty-five years of age is entitled to a refund in the amount of the member's contributions for credited service before the 1st day of January, 1987 together with interest thereon. Before
reaching
forty-five
years of age

(3) A member who ceases to be employed in education on or after reaching forty-five years of age is entitled to a refund in the amount of the member's contributions in respect of credited service before the 1st day of January, 1965 together with interest thereon. On or after
forty-five
years of age

(4) A member who receives a refund of contributions under this section is not entitled to receive a deferred pension for the credited service to which the refund relates. Reduction in
deferred
pension

36.—(1) A member entitled to a deferred pension relating to employment after the 31st day of December, 1986 is entitled to a refund, upon ceasing to be employed in education, of the amount by which the member's required contributions plus interest for the period after that date exceeds one half of the commuted value of the deferred pension for that period. 50 per cent
rule

- Exclusion (2) Subsection (1) does not apply with respect to a member's contributions for which no corresponding employer contribution is required under section 25 or 26.
- Transfer re deferred pension 1987, c. 35 37. A member entitled to a deferred pension who ceases to be employed in education is entitled to a transfer of the commuted value of the deferred pension to another retirement savings arrangement in accordance with section 43 of the *Pension Benefits Act, 1987* and to a refund of excess contributions.
- Application for refund, etc. 38.—(1) An application for a refund of contributions or a transfer of funds shall be in a form provided by the administrator.
- Payment of refund (2) A refund shall be paid in a lump sum.

PART V

RETIREMENT PENSIONS

A. Entitlement to Pension

- One pension only 39.—(1) No member is entitled to more than one retirement pension under the pension plan in respect of the same period of credited service.
- Idem (2) A member receiving a disability pension under the pension plan is not eligible to receive a retirement pension.
- Retirement (3) No member under the age of seventy-one is entitled to begin to receive a retirement pension while the member is employed in education.
- Normal retirement date 40. The normal retirement date of a member is the first day of the month following the date on which the member reaches sixty-five years of age.
- Entitlement to pension (2 year rule) 41.—(1) Subject to section 42, a member who has at least two years of credited service is entitled to receive a retirement pension for the member's lifetime calculated under subsection (3) and a payment calculated under subsection (4).
- Commencement (2) A retirement pension under this section begins as of the member's normal retirement date.
- Amount of pension (2 year rule) (3) The amount of the retirement pension, before adjustment for inflation, is calculated using the formula,

$$(A \times B) - C$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service relating to employment on or after the 1st day of January, 1987, and

"C" is the amount, if any, calculated under section 81 (CPP reduction).

- Payment, pre-1987 service (4) A member with less than ten years of credited service is entitled to a refund of contributions, if any, together with interest thereon relating to employment before the 1st day of January, 1987.

42.—(1) A member who has at least ten years of credited service for employment in whole or in part before the 1st day of January, 1987 is entitled to receive a retirement pension for the member's lifetime calculated under subsection (3).

Entitlement to pension (10 year rule), transitional

(2) A retirement pension under this section begins as of the member's normal retirement date.

Commencement

(3) The amount of the retirement pension, before adjustment for inflation, is calculated using the formula,

Amount of pension (10 year rule)

(A × B) – C

in which,

- “A” is 2 per cent of the member's average salary,
- “B” is the number of years of the member's credited service, and
- “C” is the amount, if any, calculated under section 81 (CPP reduction).

43.—(1) A member who has accumulated at least that number of years of credited service that, when added to the member's age upon termination of employment in education, totals ninety years is entitled to a retirement pension for the member's lifetime calculated under subsection (4).

Entitlement to pension (special early retirement)

(2) A member who ceases to be employed in education after the 31st day of May, 1987 and before the 1st day of September, 1990 and who has thirty-five years of credited service is entitled to a retirement pension for the member's lifetime calculated under subsection (4).

Idem (35 year rule)

(3) A retirement pension under this section begins as of the beginning of the month following the date the member ceases to be employed in education or, at the election of the member, of any month thereafter that is not later than the month after the month in which the member reaches seventy-one years of age.

Commencement

(4) The amount of the retirement pension, before adjustment for inflation, is calculated using the formula,

Amount of pension

(A × B) – C

in which,

- “A” is 2 per cent of the member's average salary,
- “B” is the number of years of the member's credited service, and
- “C” is the amount, if any, calculated under section 81 (CPP reduction).

44.—(1) A member entitled to a deferred pension under section 41 or 42 may elect to begin to receive a retirement pension on the first day of any month after the month that is ten years before the member's normal retirement date.

Early retirement option

(2) The amount of the annual retirement pension, before adjustment for inflation, of a member who elects early retirement under subsection (1) shall be calculated using the formula,

Amount of early retirement pension

$$[A \times B \times (1 - C)] - D$$

in which,

“A” is 2 per cent of the member’s average salary,

“B” is,

- (a) for a member entitled to a pension under section 42, the number of years of the member’s credited service, and
- (b) for a member entitled to a pension under section 41, the number of years of the member’s credited service for employment after the 31st day of December, 1986,

“C” is an amount equal to 0.05 times the lesser of,

- (a) the number of years by which the member’s age is less than sixty-five on the date the pension is to begin, and
- (b) ninety minus the sum of,
 - (i) the number of years of the member’s credited service determined under section 11, and
 - (ii) the member’s age on the date the pension is to begin, and

“D” is the amount, if any, calculated under section 81 (CPP reduction).

Commuted value

(3) Despite subsection (2), the commuted value of the retirement pension received on early retirement shall be not less than the commuted value of the retirement pension to which the member would be entitled on the normal retirement date based upon the member’s credited service up to the early retirement date.

Postponed pension option

45.—(1) A member may elect to begin to receive his or her retirement pension in any month after the member’s normal retirement date until the month in which the member reaches seventy-one years of age.

Amount of late retirement pension

(2) The amount of the annual retirement pension, before adjustment for inflation, of a member who elects late retirement as described in subsection (1) is calculated using the formula,

$$(A \times B) - C$$

in which,

“A” is 2 per cent of the member’s average salary,

“B” is the number of years of the member’s credited service, and

“C” is the amount, if any, calculated under section 81 (CPP reduction).

Re-employed pensioner

46.—(1) No retirement pension is payable to a re-employed pensioner while the re-employed pensioner is an active member.

Recalculation of pension

(2) If a re-employed pensioner accumulates one year or more of credited service after becoming an active member, other than by means of a purchase of credited service or by the annualization of a partial year of

credited service under section 11, and, if the re-employed pensioner makes an application to the administrator, the amount of the pensioner's retirement pension shall be recalculated in accordance with the terms of the pension plan in force on the date of the application.

(3) A re-employed pensioner who does not accumulate one year of credited service after becoming an active member is entitled when the re-employment ceases, Exception

(a) to the resumption of the retirement pension to which the pensioner was entitled immediately before becoming re-employed; and

(b) to the refund of the member's required contributions, together with interest thereon, made during the re-employment.

(4) A re-employed pensioner who receives pension payments to which the pensioner is not entitled shall repay the amount so received, together with interest thereon, before becoming entitled to further payments under the pension plan. Repayment

B. Payment of Retirement Pensions

47.—(1) A member who wishes to begin receiving a retirement pension shall apply to the administrator. Application for retirement pension

(2) A member who does not apply to begin receiving a retirement pension shall be deemed to do so on the day the member reaches seventy-one years of age. Deemed application

48.—(1) The administrator shall begin payment of a member's retirement pension not later than the later of, Payment of pension

(a) the month following the month in which the member ceases to be employed in education; or

(b) the month following the month in which application for the pension is complete.

(2) The administrator shall pay a retirement pension in monthly instalments on the last day of the month. Monthly instalments

(3) If the administrator does not begin paying a pension when required to do so under subsection (1), interest shall be paid on the payments beginning on the later of, Interest payable

(a) the end of the month in which the member becomes entitled to the pension; or

(b) the date three months after the month in which application for the pension is complete.

49.—(1) A member receiving a retirement pension shall notify the administrator in writing promptly upon becoming re-employed in education. Notice of re-employment

(2) A member who fails to comply with subsection (1) is not entitled to receive retirement pension payments for a period during which notice should have been given under that subsection. Failure to give notice

Repayment
of pension

(3) A member who receives pension payments to which the member is not entitled shall repay the amount so received, together with interest thereon, before becoming entitled to further payments under the pension plan.

PART VI

DISABILITY PENSIONS

A. Entitlement to Disability Pension

Entitlement
to disability
pension

50.—(1) This section applies to a member with at least ten years of credited service who becomes disabled while employed in education and who, as a result of the disability, ceases before the normal retirement date to be employed in education.

Full disability
pension

(2) If the administrator finds that a member described in subsection (1) is incapable of further employment, the member is entitled to a full disability pension for the member's lifetime.

Partial
disability
pension

(3) If the administrator finds that a member described in subsection (1) is incapable of further employment in education, the member is entitled to a partial disability pension for the member's lifetime.

Eligibility

(4) A member who has previously terminated his or her membership and who returns to membership and purchases credited service for previous employment in education is not eligible to receive a disability pension until the member accumulates two additional years of credited service.

Idem

(5) Subsection 11 (2) (partial year) does not apply for the purpose of determining a member's accumulation of the two additional years of credited service under subsection (4).

Effect of re-
employment

51.—(1) A member receiving a full disability pension who becomes employed ceases to be entitled to a full disability pension.

Idem

(2) A member receiving a disability pension who becomes employed in education as a teacher ceases to be entitled to a disability pension.

Reduced
partial
disability
pension

(3) A member receiving a disability pension who becomes employed in education otherwise than as a teacher is entitled to receive a reduced partial disability pension.

Application

(4) This section applies with respect to a member who is receiving a disability pension on or after the 1st day of January, 1990.

Amount of
full disability
pension

52.—(1) The amount of the annual full disability pension, before adjustment for inflation, for a member is calculated using the formula,

$$(A \times B) - C$$

in which,

“A” is 2 per cent of the member's average salary,

“B” is the number of years of the member's credited service under the plan, and

“C” is the amount, if any, calculated under section 81 (CPP reduction).

(2) The amount of a partial disability pension, before adjustment for inflation, for a member is calculated using the formula,

Amount of
partial
disability
pension

$$[(A \times B) (1 - C)] - D$$

in which,

“A” and “B” have the same meaning as in the formula for calculating the amount of a full disability pension,

“C” is an amount equal to 0.025 times the lesser of,

- (a) the number of years by which the member's age on the date the pension begins is less than the member's age at the normal retirement date, and
- (b) ninety minus the sum of,
 - (i) the number of years of the member's credited service determined under section 11, and
 - (ii) the member's age on the date the pension begins, and

“D” is the amount, if any, calculated under section 81 (CPP reduction).

(3) The annual amount of the partial disability pension, before adjustment for inflation, shall not be less than 75 per cent of the full disability pension.

Limitation

(4) The annual amount of a member's reduced partial disability pension, before adjustment for inflation, is calculated using the formula,

Amount of
reduced
partial
disability
pension

$$A - [(A + B) - C]$$

in which,

“A” is the amount of the member's disability pension immediately before the member begins the new employment in education,

“B” is the salary for the year from the member's new employment in education,

“C” is the annual salary of the member immediately before the member ceased, as a result of the disability, to be employed in education, increased in respect of each year after the person so ceased to be employed up to the year in which the member begins the new employment in education,

- (a) as if it were being adjusted for inflation in accordance with section 80, for periods beginning on or after the 1st day of January, 1990, and
- (b) in the same manner as a pension would be increased under the *Superannuation Adjustment Benefits Act*, for periods ending before the 1st day of January, 1990, and

R.S.O. 1980,
c. 490

in which the amount represented by “[(A + B) - C]” is the greater of,

- (c) zero, and

(d) the amount otherwise determined in accordance with the definitions of "A", "B" and "C".

Resumption
of disability
pension

53.—(1) Subject to subsection (2), if a member becomes re-employed in education and ceases to receive a disability pension under the pension plan or a predecessor Act or begins to receive a reduced disability pension, the member is entitled upon ceasing the re-employment to the resumption of the original disability pension without adjustment of the amount of the pension.

Idem

(2) A member described in subsection (1) who completes the equivalent of two years of full-time employment in education after becoming re-employed and then ceases to be so employed shall make a fresh application for a pension, and the terms of the pension plan on the date the application is made shall apply with respect to the member's entitlement to a pension.

Change of
disability
status re
survivor
pension

54.—(1) This section applies if a member receiving a partial disability pension or a reduced partial disability pension dies while the administrator is considering whether the member is entitled to a full disability pension based upon fresh medical evidence concerning the member's disability.

Determina-
tion
by the
administrator

(2) Having regard to the facts established at the date of the member's death, the administrator shall determine whether the member would have been entitled, immediately before the date of death, to a full disability pension.

Deemed
receipt

(3) For the purpose of calculating the amount of a survivor pension, child's pension or beneficiary's pension, if the administrator determines that the member would have been entitled to a full disability pension, the member shall be deemed to have been receiving it on the date of death.

B. Payment of Disability Pension

Application
for disability
pension

55.—(1) A member shall apply for a disability pension within two years after the date when the member ceases, as a result of the disability, to be employed in education.

Idem

(2) The administrator shall accept an application for a disability pension that is made after the time described in subsection (1) if the administrator is satisfied,

- (a) that the delay in making the application resulted from a delay in diagnosing the disability; or
- (b) that the member was unable, because of the effects of the disability, to make the application within the time described in subsection (1).

Proof of
disability

(3) No application for a disability pension shall be considered by the administrator until the administrator has received,

- (a) the certificate of a legally qualified medical practitioner designated by the administrator, certifying that the applicant became mentally or physically disabled while employed in education and indicating the nature and degree of the disability; and
- (b) a report of the medical referee of the administrator containing such recommendations as the medical referee considers proper with regard to the granting of a disability pension to the applicant.

Disability
pension,
predecessor
Acts

56.—(1) This section applies with respect to a person who ceased to be employed in education before the 1st day of January, 1990 as a result of a

mental or physical incapacity and who did not apply for a disability allowance under a predecessor of this Act.

(2) Section 55 applies with necessary modifications to an application by a person described in subsection (1). Application

(3) The person is entitled to a disability allowance determined in accordance with the *Teachers' Superannuation Act, 1983*. Entitlement 1983, c. 84

(4) Clause 17 (1) (d) or 18 (1) (d) of the *Teachers' Superannuation Act, 1983* does not apply if the administrator accepts an application under subsection 55 (2). Idem

57.—(1) Subject to subsection (2), a member's disability pension shall begin as of the first day of the month following the month in which the member ceases to be employed in education. Commencement of disability pension

(2) No disability pension shall begin as of a date earlier than one year before the date the administrator receives the completed application for the pension. Idem

(3) A member's reduced partial disability pension shall begin as of the first day of the month following the month in which the member becomes re-employed. Reduced partial disability pension

(4) The administrator shall pay a disability pension in monthly instalments. Monthly instalments

(5) Disability pension payments are due on the last day of the month. Due date

(6) Interest shall be paid on overdue pension payments if the administrator does not begin paying a pension by the end of the month in which the member becomes entitled to receive it. Interest payable

58.—(1) The administrator may at any time require a member who is receiving a disability pension to furnish evidence, in such form as the administrator directs, of the member's mental or physical condition. Evidence of medical condition

(2) If the member fails to furnish evidence within a reasonable time that his or her condition continues to be of a nature that entitles the member to receive the disability pension, the administrator shall terminate payment of the pension. Failure to furnish evidence

(3) If the administrator terminates payment of a full disability pension, the member may request the administrator to review the decision to terminate payment. Review by administrator

(4) If the administrator is satisfied upon reviewing a decision to terminate payment that the member is entitled to a disability pension under section 50 or 51, the administrator shall pay the disability pension. Idem

(5) This section does not apply with respect to a member who has reached normal retirement age. Application

59.—(1) A member receiving a disability pension shall notify the administrator in writing promptly upon becoming employed or changing employment. Notice of re-employment

(2) A member who fails to comply with subsection (1) is not entitled to receive a disability pension payment during a period when notice should have been given under that subsection. Failure to give notice

Repayment
of pension

(3) A member who receives pension payments to which the member is not entitled shall repay the amount so received, together with interest thereon, before becoming entitled to further payments under the pension plan.

PART VII

BENEFITS UPON DEATH

A. Upon the Death of a Member not Entitled to a Pension

Refund of
contributions

60. The personal representative of a member who dies without becoming entitled to a deferred pension is entitled to a refund of the member's contributions together with interest thereon.

B. Upon the Death of a Member Entitled to a Deferred Pension

Pre-re-
tirement
(spousal)
death benefit

61.—(1) If a member who is entitled to a deferred pension or a disability pension dies before the first instalment of the pension is due, the person who is the spouse of the member on the date of death is entitled to receive,

- (a) the benefit described in section 62 in respect of the member's employment, if any, before the 1st day of January, 1987; and
- (b) the benefit described in section 63, in respect of the member's employment, if any, on or after the 1st day of January, 1987.

Application

(2) Subsection (1) does not apply if the member and the spouse are living separate and apart on the date of death of the member.

Pre-1987
(spousal)
death benefit

62.—(1) This section applies with respect to that portion of the death benefit that relates to a member's employment before the 1st day of January, 1987.

Survivor
pension

(2) The spouse of a member with ten years or more credited service is entitled to the survivor pension described in subsection (3) for the lifetime of the spouse.

Pre-1987
survivor
pension

(3) The amount of the survivor pension, before adjustment for inflation, shall be based upon the member's credited service for employment before the 1st day of January, 1987 and shall be one half of the amount of the pension, before adjustment for inflation,

- (a) that would have been paid to the member at the date of death, if the member was at least sixty-five years of age on the date of death; or
- (b) that would have been paid to the member as of the first day of the month following the month in which he or she would have reached sixty-five years of age, if the member was less than sixty-five years of age on the date of death.

Refund of
contributions

(4) The spouse of a member with less than ten years of credited service is entitled to a refund of the member's contributions for employment before the 1st day of January, 1987 together with interest thereon.

Post-1986
(spousal)
death benefit

63.—(1) This section applies with respect to that portion of the death benefit that relates to a member's employment on or after the 1st day of January, 1987.

Benefit

(2) The spouse of a member with two years or more credited service is entitled to the benefit described in subsection (4).

(3) The spouse of a member with less than two years of credited service is entitled to a refund of the member's contributions for employment on or after the 1st day of January, 1987 together with interest thereon. Refund of contributions

(4) The benefit referred to in subsection (2) is, Idem

(a) a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for credited service for employment on or after the 1st day of January, 1987; or

(b) an immediate or a deferred survivor pension for the lifetime of the spouse, the commuted value of which is at least equal to the commuted value of a pension for credited service for the member's employment on or after the 1st day of January, 1987, calculated as if the member had become entitled to a retirement pension on the date of death.

(5) The spouse may elect the form of benefit to be paid under subsection (4) and a spouse who does not do so within twelve months after the death of the member shall be deemed to have elected to receive an immediate survivor pension. Election

(6) A spouse who elects to receive a deferred survivor pension may elect to begin to receive the pension at any time up to the month after the month in which the spouse reaches seventy-one years of age. Deferred survivor pension

64.—(1) This section applies with respect to the dependent children of a member entitled to a deferred pension or a disability pension who died before the first instalment of the pension was due and, Pre-retirement child's pension

(a) who had a spouse who became entitled to a survivor pension who subsequently died; or

(b) who did not have a spouse entitled to a survivor pension.

(2) Subject to subsection (3), each dependent child of a member is entitled upon the death of the spouse or the member, as the case may be, to receive a child's pension while the child remains a dependent child. Entitlement to child's pension

(3) No child's pension is payable in respect of the credited service of a deceased member for which the spouse of the member received the lump sum payment described in clause 63 (4) (a). Exception

(4) The amount of the child's pension, before adjustment for inflation, shall be one half of the amount of the pension, before adjustment for inflation, Amount of child's pension

(a) that would have been paid to the member at the date of death, if the member was at least sixty-five years of age on that date;

(b) that would have been paid to the member as of the first day of the month following the month in which he or she would have reached sixty-five years of age, if the member was less than sixty-five years of age on the date of death.

(5) The child's pension shall be shared equally among the member's dependent children. Idem

(6) The share of the child's pension of each of the children who ceases to be a dependent child accrues to the remaining dependent children, if any. Share accrues to others

Benefit to beneficiary	<p>65.—(1) A beneficiary designated by a member entitled to a deferred pension or a disability pension is entitled to the benefit described in subsection (2),</p> <ul style="list-style-type: none"> (a) if the member dies before the first instalment of the pension is due; and (b) if, on the date of death, the member does not have a spouse or a dependent child entitled to a benefit payable on his or her death.
Amount of benefit	<p>(2) The benefit is a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for credited service for employment on or after the 1st day of January, 1987.</p>
Benefit to estate	<p>66.—(1) The estate of a member entitled to a deferred pension or a disability pension who dies before the first instalment of the pension is due is entitled to the payments described in this section.</p>
Idem, no others entitled	<p>(2) If no other person is entitled to a benefit on the death of the member, the estate is entitled to,</p> <ul style="list-style-type: none"> (a) a refund of the member's contributions for employment before the 1st day of January, 1987 together with interest thereon; and (b) a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for credited service for employment on or after the 1st day of January, 1987.
Residual entitlement	<p>(3) If another person is entitled to a benefit on the death of the member, the estate is entitled to a refund of the amount by which the member's contributions together with interest thereon exceeds the amount paid to the other person together with interest thereon.</p>

C. Upon the Death of a Pensioner

Survivor pension, spouse	<p>67.—(1) If a member is receiving a pension on the date of death, the person who is the spouse of a member on the date the first instalment of the pension was due is entitled to the survivor pension described in subsection (3) for the spouse's lifetime.</p>
Application	<p>(2) Subsection (1) does not apply if the member and the spouse were living separate and apart on the date the first instalment of the member's pension was due.</p>
Amount of survivor pension	<p>(3) Subject to sections 68 and 69, the amount of the annual survivor pension, before adjustment for inflation, payable to the surviving spouse shall be not less than 50 per cent of the pension, before adjustment for inflation,</p> <ul style="list-style-type: none"> (a) that was being paid to the member at the date of death, if the member was at least sixty-five years of age on that date; or (b) that would have been paid to the member as of the first day of the month next following the month in which he or she would have reached sixty-five years of age, if the member was less than sixty-five years of age on the date of death.
Spousal election re survivor pension	<p>68.—(1) In the absence of a joint waiver by a member and the member's spouse of the spouse's entitlement under subsection 45 (3) of the <i>Pension Benefits Act, 1987</i> (amount of survivor benefit), the amount of the</p>

survivor pension payable on the death of the member shall be not less than 60 per cent of the pension paid to the member during their joint lives.

(2) A waiver referred to in subsection (1) is void if it is delivered to the administrator more than twelve months before the date that the first instalment of the member's pension is due or after the date that the first instalment is due.

Waiver void

(3) In the absence of a waiver referred to in subsection (1), the amount of the pension payable to the member shall be actuarially reduced to allow for payment of the increased survivor pension in accordance with subsection (1).

Adjustment of member's pension

(4) This section does not apply with respect to a member who, before the 1st day of January, 1988, began to receive a pension under a predecessor Act.

Application

69.—(1) A member may direct the administrator to increase the amount of a survivor pension that may become payable under section 67 in respect of the member to an amount equal to 55, 65, 70 or 75 per cent of the member's pension that would be payable if the amount of the pension were calculated without regard to this section.

Increase of survivor pension

(2) A direction must be given in writing and must be delivered to the administrator at least two years before the earlier of,

Time limit

(a) the member's normal retirement date; or

(b) the beginning of the month in which the member's pension begins.

(3) The administrator shall act on a direction delivered after the deadline specified in subsection (2) and before the member applies for a retirement pension if the administrator is satisfied that the member is in good health having regard to the member's age.

Idem

(4) The amount of the pension payable to the member shall be actuarially reduced to allow for payment of the increased survivor pension in accordance with the direction.

Adjustment of member's pension

(5) The commuted value of pension paid to the member including the commuted value of the increased survivor benefit shall not be less than the commuted value of the pension, including survivor benefit, that would otherwise be payable.

Commuted value

(6) A member may revoke a direction given under this section by a written revocation delivered to the administrator before the member begins receiving a pension.

Revocation of direction

(7) A direction given under this section by a member is void if the member dies before beginning to receive a pension.

Direction void

70.—(1) In this section, "new spouse", in relation to a member, means a person who becomes the spouse of the member after the member begins to receive a retirement or disability pension.

Survivor pension, new spouse

(2) A member receiving a retirement or disability pension who does not have a spouse eligible to receive a survivor pension under section 67 may, while receiving the pension, direct the administrator to provide a survivor pension to a new spouse.

Idem

(3) A direction must be given in writing and must be delivered to the administrator on or before the later of,

Time limit

- (a) ninety days after the date on which the member becomes the spouse of the new spouse; or
- (b) if immediately before the member becomes the spouse of the new spouse there is a child who would be entitled upon the death of the member to receive a child's pension under section 73, ninety days after the date on which the child ceases to be eligible to receive the child's pension.

Idem (4) The administrator shall act on a direction delivered after the deadline specified in subsection (3) if the administrator is satisfied that the member is in good health having regard to the member's age.

Amount of survivor pension (5) In giving the direction, a member receiving a retirement pension shall direct the administrator to pay a survivor pension in the amount of 50, 55, 60, 65, 70 or 75 per cent of the pension that would otherwise be payable on the first day of the month next following the month in which the member becomes the spouse of the new spouse.

Adjustment of member's pension (6) The amount of a retirement pension payable to the member shall be actuarially reduced to allow for payment of the survivor pension in accordance with the direction.

Idem (7) The actuarial reduction required by subsection (6) shall be based upon the ages of the member and of the spouse on the last day of the month in which the direction is delivered to the administrator.

Payment of survivor pension (8) The administrator shall pay the survivor pension in accordance with the direction but not while there is a person who is eligible to receive a child's pension in respect of the member.

Survivor pension, predecessor Acts 71.—(1) This section applies with respect to a member who, before the 1st day of September, 1984, ceased to be employed in education within the meaning of a predecessor of this Act and who became the spouse of a person after ceasing that employment.

Direction re survivor pension (2) A member described in subsection (1) may direct the administrator to provide a survivor benefit for the member's spouse and section 70 applies with respect to the direction with necessary modifications.

Time limit (3) A direction under this section shall be delivered to the administrator on or before the latest of,

- (a) the 31st day of March, 1990;
- (b) ninety days after the date on which the member becomes a spouse; or
- (c) if on the 1st day of January, 1990 there is a child who would be entitled upon the death of the member to receive a survivor allowance under a predecessor of this Act, ninety days after the date on which the child ceases to be eligible to receive the survivor allowance.

Idem (4) The administrator shall act on a direction delivered after the deadline specified in subsection (3) if the administrator is satisfied that the member is in good health having regard to the member's age.

Deemed direction (5) A member described in subsection (1) who dies on or before the 31st day of March, 1990 without having given a direction under this section shall be deemed to have given it on that date and shall be deemed to have directed the administrator to pay a 50 per cent survivor pension.

72.—(1) This section applies with respect to a person who became the spouse of a member described in subsection 71 (1) after the member ceased to be employed in education within the meaning of a predecessor of this Act. Survivor pension (prior inquiry)

(2) This section does not apply unless the member has ceased to be a member before the 1st day of January, 1990 because he or she has died. Idem

(3) A spouse described in subsection (1) is entitled to a survivor pension calculated from the date of a written inquiry respecting a survivor pension, Survivor pension

(a) made to the Teachers' Superannuation Commission before the 1st day of January, 1990; or

(b) made to the administrator on or after the 1st day of January, 1990.

(4) The amount of the survivor pension is 50 per cent of the amount of the member's retirement pension on the date of the member's death adjusted for inflation as if it were a pension for the period from the date of the member's death to the date the spouse becomes entitled to the survivor pension. Amount of pension

73.—(1) This section applies with respect to the dependent children of a member who died while receiving a retirement or disability pension and, Child's pension

(a) who had a spouse who died after becoming entitled to a survivor pension; or

(b) who did not have a spouse entitled to a survivor pension.

(2) Each dependent child of a member, upon the death of the spouse or the member, as the case may be, is entitled to a child's pension while remaining a dependent child. Entitlement to child's pension

(3) The amount of the annual child's pension is the amount of the survivor pension to which a spouse of the member was or would have been entitled after the death of the member, shared equally among the dependent children. Amount of child's pension

(4) The share of the child's pension of each of the children who ceases to be a dependent child accrues to the remaining dependent children, if any. Share accrues to others

74.—(1) A beneficiary designated by a member is entitled to a beneficiary's pension upon the death of a member, Beneficiary's pension

(a) who was receiving a retirement or disability pension on the date of death; and

(b) who did not have a spouse entitled to a survivor pension or a child entitled to a child's pension on the date of death.

(2) A direction must be given in writing and must be delivered to the administrator at least two years before the earlier of, Time limit

(a) the member's normal retirement date; or

(b) the beginning of the month in which the member's pension begins.

(3) The administrator shall act on a direction delivered after the deadline specified in subsection (2) and before the member applies for a retire- Idem

ment pension if the administrator is satisfied that the member is in good health having regard to the member's age.

- Amount of beneficiary's pension (4) In giving the direction, the member shall direct the administrator to pay a beneficiary's pension in the amount of 50, 55, 60, 65, 70 or 75 per cent of the member's pension that would otherwise be payable on the date of the member's death if the amount of the pension were calculated without regard to this section.
- Adjustment of member's pension (5) The amount of the pension payable to the member shall be actuarially reduced to allow for payment of the beneficiary's pension in accordance with the direction.
- Revocation of direction (6) A member may revoke a direction by a written revocation delivered to the administrator before the member begins to receive a pension.
- Direction void (7) A direction given under this section by a member is void if the member dies before beginning to receive a pension.
- Benefit to estate 75. The estate of a member who was receiving a pension on the date of death is entitled to a refund of the amount by which the member's contributions together with interest thereon exceeds the sum of the amount paid to the member and the amount, if any, paid to every other person who was entitled to a benefit on the member's death, together with interest thereon.

D. Payment of Death Benefits

- Commencement of pension 76.—(1) A pension that is payable immediately on the death of a member who was not receiving a retirement or disability pension on the date of death shall begin as of the day after the day the member dies.
- Idem (2) A pension that is payable on the death of a member who was receiving a retirement or disability pension on the date of death shall begin as of the first day of the month after the month in which the member dies.
- Payments to estate 77.—(1) If the administrator is unable to locate a personal representative of the estate of a deceased member, the administrator may pay into court any payments that under the pension plan are required to be made to the estate.
- Missing beneficiary 1987, c. 35 (2) If the administrator is unable, after making reasonable inquiries, to locate an individual who is entitled to a death benefit under the pension plan or a beneficiary designated by the deceased member under the *Pension Benefits Act, 1987*, the administrator shall pay to the estate of the deceased member one year after the date of death the amount to which the estate is otherwise entitled when no other person is entitled to a benefit on the death of the member.
- Missing beneficiary found (3) If an individual entitled to a death benefit under the pension plan or a beneficiary designated by the deceased member under the *Pension Benefits Act, 1987* applies for the benefit after the administrator makes a payment under subsection (2), the administrator shall pay the individual the amount of the benefit to which the individual is entitled less the amount paid to the estate by the administrator.
- Transitional (4) This section applies with respect to a person with credited service under a predecessor of this Act who dies before the 1st day of January, 1990, as if that person were a deceased member of the pension plan.
- Discharge (5) The administrator is discharged on making a payment in accordance with this section.

78.—(1) In this section, “court” has the same meaning as in Part V of the *Succession Law Reform Act*.

Interpleader, more than one applicant
R.S.O. 1980, c. 488

(2) If more than one person applies to the administrator for a benefit in respect of a deceased member, the court, on application by the administrator, by order may direct payment of the benefit or part thereof to one or more of the applicants and shall specify the proportion of the benefit that shall be paid to each of them.

Court may order

(3) The administrator’s application shall be made in the same manner as an application under Part V of the *Succession Law Reform Act*.

Application to court
R.S.O. 1980, c. 488

(4) Section 62 of the *Succession Law Reform Act* applies with necessary modifications in respect of the allocation of proportions of the benefit and, for the purpose, “dependant” means spouse, child or beneficiary of the deceased member.

Application of
R.S.O. 1980, c. 488, s. 62

PART VIII

BENEFITS AND PAYMENTS — GENERAL

A. Adjustments for Inflation

79.—(1) Every retirement pension, disability pension, survivor pension, child’s pension and beneficiary’s pension shall be adjusted for inflation in accordance with section 80.

Inflation adjustment, pensions

(2) Every deferred pension payable under the pension plan shall be adjusted for inflation in accordance with section 80 for the period beginning at the end of the last month for which the member has credit under the plan and ending when the pension begins.

Idem, deferred pensions

(3) No pension or deferred pension shall be adjusted under this section for inflation in respect of a period before the 1st day of January, 1990.

Limitation

80.—(1) In the formulas in this section,

Calculation of inflation adjustments

“A” is the carry forward determined for the immediately preceding year,

“B” is the basic ratio for the year,

“C” is the adjustment ratio for the year,

“D” is the basic ratio for the year after the last year for which the member for whose credit in the pension plan the pension in respect of which the formula is applied is payable has credit in the pension plan, and shall be calculated to a maximum of 1.080 or to a minimum of 1.000, and

“E” is the number of full months in the year that are after the month in the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan.

(2) In this section,

Definitions

"accumulated adjustment ratio", for a person's pension, means the product of the multiplication of all adjustment ratios for the years in the period commencing with the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan and ending with the year for which the accumulated adjustment ratio is being determined;

"adjustment ratio", for a person's pension, means,

- (a) for any year before the year 1976 and for the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan, 1.000,
- (b) if the member for whose credit in the plan the pension is payable ceased to be employed in education in or after the year 1975, for the year after the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan, the ratio determined by the formula " $[(D - 1.000) \times E / 12] + 1.000$ ", and
- (c) for the later of the year 1976 and the second year after the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan and for any subsequent year, the ratio determined by the formula " $A + B$ " calculated to a maximum of 1.080 or to a minimum of 1.000;

"basic ratio", for a year, means the ratio expressed to three decimal places that the average for the Consumer Price Index over the last twelve months of the twenty-four-month period ending with the 30th day of September in the immediately preceding year bears to the average for the Consumer Price Index over the first twelve months of that period;

"carry forward", with respect to the pension of a person, means,

- (a) for any year before the year 1976, for the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan and for the year after that year, nil, and
- (b) for the later of the year 1976 and the second year following the last year for which the member for whose credit in the plan the pension in respect of which the formula is applied is payable has credit in the pension plan and for any subsequent year, the positive or negative number determined by the formula " $A + B - C$ ";

R.S.C. 1985,
c. S-19

"Consumer Price Index" means the Consumer Price Index for Canada as published by Statistics Canada under the authority of the *Statistics Act* (Canada);

1983, c. 84

"member" includes a contributor within the meaning of the *Teachers' Superannuation Act, 1983* or a predecessor Act;

"pension" means a pension to which a person is entitled from the plan other than the adjustment for inflation provided by this section, and an allowance, annuity, deferred annuity or other periodic payments to which a person has become entitled under the *Teachers' Superannuation Act, 1983* or a predecessor Act;

"plan" includes the pension plan established under the *Teachers' Superannuation Act, 1983* and any predecessor Act.

(3) The annual amount of pension payable to a person from the pension fund shall, commencing with the year when payment of the pension is to commence and in each subsequent year that the pension continues to be payable, be adjusted for inflation by multiplying the annual amount of the pension by the accumulated adjustment ratio for the pension of the person for that year, and the amount by which the pension thus adjusted exceeds the annual amount of pension before the adjustment in each year shall be paid to the person entitled to receive the pension for which it is calculated at the same times, in the same manner and subject to the same terms and conditions as apply to the pension in respect of which it is paid.

Payment of inflation adjustment

(4) The ratio determined for the year 1990 under the *Superannuation Adjustment Benefits Act* does not apply to a pension to which this section applies.

Ratio not to apply
R.S.O. 1980, c. 490

(5) For the purpose of determining an accumulated adjustment ratio, a person's re-employment in education for less than twenty-one days in a school year after the person ceases to be employed in education and before the person begins to receive a pension shall not be considered in determining the year in which the person ceases to be employed in education.

Effect of re-employment

B. CPP Reduction

81.—(1) If a member has contributed to the *Canada Pension Plan* or the *Quebec Pension Plan*, the amount of the member's retirement pension, full disability pension or partial disability pension shall be reduced by the amount calculated under subsection (3).

CPP reduction for pensions
R.S.C. 1985, c. C-8
R.S.Q. 1977, c. R-9

(2) A reduction of a member's pension shall apply with respect to pension payments due the month after the earlier of,

Commencement, retirement pension

(a) the month in which the member reaches sixty-five years of age; or

(b) the month in which the first instalment of the member's disability pension, if any, under the *Canada Pension Plan* or the *Quebec Pension Plan* is due.

(3) The amount of the reduction in an annual pension is calculated using the formula,

Amount of reduction

$$0.007 \times A \times B$$

in which,

"A" is the lesser of,

(a) the member's average salary, and

(b) the amount determined under subsection (4), and

"B" is the number of years of the member's credited service for employment on or after the 1st day of January, 1966 in respect of which the member made contributions under the *Canada Pension Plan* or the *Quebec Pension Plan*.

(4) The amount is the average of the Year's Maximum Pensionable Earnings for the year in which the member ceases to be employed in education and for each of the two preceding years.

Idem

C. Payment of Benefits

- Application for benefit **82.**—(1) No benefit under the plan shall be paid before the administrator receives an application for it in the form provided by the administrator.
- Election or direction (2) An election available under the plan or a direction that may be given to the administrator shall be made or given in the form provided by the administrator.
- Multiple pensions **83.** No member is entitled to payment of more than one pension under the plan during the same month or other payment period in respect of the member's credited service.
- Commutation of pensions 1987, c. 35 **84.** The administrator may pay the commuted value of a pension, other than a disability pension, in accordance with section 51 of the *Pension Benefits Act, 1987*.
- Deductions from pensions 1987, c. 35 **85.**—(1) Despite section 66 of the *Pension Benefits Act, 1987*, a person receiving a pension under the pension plan or an allowance under a predecessor Act may direct the administrator to deduct and remit from the pension or allowance on behalf of the person,
- (a) premiums payable under the Ontario Health Insurance Plan by the person;
 - (b) premiums for life, medical, dental or health-related insurance payable by the person under a contract of group insurance approved by the administrator for the purpose of this section; and
 - (c) membership fees payable to the Superannuated Teachers of Ontario Inc.
- Conditions (2) The administrator may impose and require compliance with such conditions as the administrator considers appropriate before acting upon a direction.
- Revocation of direction (3) A person making a direction may revoke it by written notice to the administrator.
- Termination of pension **86.** Every pension terminates as of the end of the month in which the event that terminates the pension occurs.

D. Administration

- Appeal of decision **87.**—(1) A person who is aggrieved by a decision of an employee of the administrator or a committee of the administrator respecting the person's entitlement to, or the amount of, a pension benefit may appeal the decision to the administrator and the administrator shall determine the appeal.
- Idem (2) An appeal shall be made in accordance with the procedures established by the administrator.
- Determination of commuted value **88.** The commuted value of a benefit shall not be less than the amount calculated in accordance with the *Recommendations for Minimum Transfer Values of Pensions* published from time to time by the Canadian Institute of Actuaries and shall be calculated using the rate of interest specified by, and such actuarial tables as may be adopted by, the administrator.
- Calculation of interest **89.**—(1) Unless otherwise indicated, the standard interest rate attributable to a transaction is the rate that is the weighted average effective annual

yield of the debentures held by the pension fund as at the 31st day of December in the year preceding the transaction and interest is compounded annually on the anniversary date of the transaction.

(2) For 1990 the standard interest rate attributable to a transaction is the weighted average effective annual yield of the debentures held by the Teachers' Superannuation Fund under the *Teachers' Superannuation Act, 1983* as at the 31st day of December, 1989. Idem,
transitional
1983, c. 84

(3) Interest payable in respect of a period before the 31st day of December, 1989 shall be calculated up to that date at the applicable rate in effect under the *Teachers' Superannuation Act, 1983* and after that date it shall be calculated at the standard interest rate in effect on the 1st day of January, 1990. Idem,
transitional

(4) Interest credited under the pension plan on contributions shall be calculated in accordance with the *Pension Benefits Act, 1987* and credited to the member as at the 31st day of December in each year. Interest on
contributions
1987, c. 35

(5) Interest is payable in accordance with the *Pension Benefits Act, 1987* on a lump sum payment of the commuted value of a benefit from the effective date of the determination of the commuted value to the date the lump sum is paid. Interest on
lump sums
1987, c. 35

90.—(1) At the request of the administrator, a member receiving a pension shall report to the administrator the number of days, if any, that the member is employed in education while receiving the pension. Report re
employment
in education

(2) If a member does not report within a reasonable time after the request, the administrator shall cease to pay the pension until the report is given. Failure to
report

91.—(1) This section applies to a person who, before the 17th day of December, 1971, would have been entitled to more than one allowance under *The Teachers' Superannuation Act* or a predecessor thereof but for section 37 of that Act, if a refund of contributions was made in lieu of the payment of the second allowance. Prior refund
re multiple
pensions
R.S.O. 1970,
c. 455

(2) A person who was not paid a second allowance solely because the person was not entitled to more than one allowance under the existing pension plan is entitled to receive a pension calculated under subsection (3) in addition to any pension to which the person is otherwise entitled under the plan or a predecessor Act. Entitlement
to
reinstatement

(3) The amount of the person's pension is calculated by adjusting for inflation for the period described in subsection (4) the amount of the pension to which the person would have been entitled immediately before payment of the refund with respect to that pension. Amount of
pension

(4) An inflation adjustment of the amount described in subsection (3) shall be made for the period ending on the date the person becomes entitled to the pension under this section and beginning on the date that is the later of,

(a) the 1st day of January, 1976; or

(b) the date of payment of the refund of contributions in respect of the second allowance.

(5) Payment of a pension under this section begins as of the date the person applies to the administrator. Payment
pension

Idem (6) No amount is payable under this section in respect of a period before the 1st day of January, 1990.

PART IX

PURCHASE OF CREDIT FOR SERVICE

A. General

Purchases, general 92. The purchase of credited service by a member whose completed application is delivered to the administrator on or after the 1st day of January, 1992 shall be made in accordance with this Part.

Purchases, transitional 93.—(1) The purchase of credited service by a member who delivers a completed application to the administrator before the 1st day of January, 1992 shall be made in accordance with sections 9, 10, 36, 45 and 48 of the *Teachers' Superannuation Act, 1983* and with sections 7 to 14 of Ontario Regulation 423/84 as those sections read on the 31st day of December, 1989.

Idem (2) The *Teachers' Superannuation Act, 1983* as it reads on the 31st day of December, 1989 continues to apply for the purpose of determining a purchase of credited service under subsection (1).

Transitional (3) Sections 95, 96 and 99 apply with respect to a member's application before the 1st day of January, 1992 in the circumstances described in those sections.

End of transitional period (4) A person is not eligible after the 31st day of December, 1994 to make or complete a purchase of credited service to which a predecessor Act applies.

Interest rate (5) For the purpose of a purchase of credited service described in subsection (1) for a period on or after the 1st day of January, 1990, references to the applicable rate of interest in Ontario Regulation 423/84 shall be read as if they were references to the standard interest rate.

Idem (6) Subsection 89 (3) (interest on contribution) does not apply with respect to a purchase of credited service described in subsection (1) for a period before the 1st day of January, 1990.

B. For Employment in Education

Absences and breaks in service 94.—(1) In this section,
 “absence” means a leave of absence, with or without pay, to which a member's employer consents;

“break in service” means a period when a member is not employed in education or is absent from employment without the employer's consent;

“return date” means the date determined under subsection (8).

Purchase re break in service (2) An active member may purchase credited service for a break in service,

(a) taken for personal or health reasons approved by the administrator;

- (b) taken upon the pregnancy of the member, for the birth or adoption of the member's child or for the purpose of caring for the member's child under seven years of age; or
- (c) taken for the purpose of serving as a member of the Legislative Assembly of Ontario, of the House of Commons of Canada or of the council of a municipality or local board within the meaning of section 1 of the *Municipal Affairs Act*. R.S.O. 1980, c. 303
- (3) An active member may purchase credited service under this section, Restriction
- (a) if the member was an active member employed in education for a period equal to one school year of full-time employment before beginning the first such absence or break in service; and
- (b) if the member completes seventy days of credited service at any time after the member returns from the latest absence or break in service for which credited service is being purchased.
- (4) An active member may purchase credited service for all or part of an absence or a break in service. Purchase re absence
- (5) No member may purchase credited service for an absence for the purpose of service in political office if the member is contributing to or is entitled to a pension under another registered pension plan other than the *Canada Pension Plan* or the *Quebec Pension Plan* in respect of the service. Idem
R.S.C. 1985, c. C-8
R.S.Q. 1977, c. R-9
- (6) An active member who elects to purchase credited service on or before the first anniversary of the member's return date shall contribute, Amount of contribution
- (a) an amount not greater than the sum of the required contributions the member would have made if the member were not absent, based upon the pensionable salary that the member's employer advises the administrator that the member would have earned; and
- (b) interest thereon from the date each contribution would have been made and ending on the day it is paid.
- (7) A contribution under subsection (6) shall be paid as a lump sum, Due date
- (a) before the fifth anniversary of the member's return date, for an absence or break in service taken upon the pregnancy of the member, for the birth or adoption of the member's child or for the purpose of caring for the member's child under seven years of age; and
- (b) before the third anniversary of the member's return date, for an absence or break in service not described in clause (a).
- (8) A member's return date following an absence or break in service is the member's twenty-first day of employment in education in the first school year during which the member works more than twenty days following the absence or break. Return date
- (9) A contribution under subsection (6) is considered to be a required contribution for the purpose of sections 25 and 26. Status of contributions
- (10) A member who elects to purchase credited service after the date described in subsection (6) or who fails to make a payment before the due date under subsection (7) shall contribute a lump sum which is, on the date Amount of contribution, delayed election

of the purchase, equal to the actuarial cost of the expected pension improvement.

Advance
payments

(11) A member may make contributions during an absence or break in service but the member only becomes entitled to credited service in respect of those contributions upon complying with clause (3) (b).

Idem

(12) A member may make a contribution before completing seventy days of credited service after returning to active membership but the member only becomes entitled to credited service in respect of the contribution upon complying with clause (3) (b).

Idem

(13) A member who makes contributions during an absence or break in service is entitled to a refund of those contributions at any time before completing the purchase of credited service or complying with clause (3) (b).

Refund

(14) A member who makes a contribution before completing seventy days of credited service after returning to active membership is entitled to a refund of the contribution at any time before complying with clause (3) (b).

Limit on
purchase

(15) No member may purchase more than seven years of credited service under this section.

Idem

(16) Subsection (15) does not apply with respect to an absence or a break in service taken upon the pregnancy of the member, for the birth or adoption of the member's child or for the purpose of caring for the member's child under seven years of age but no member may purchase more than two years of credited service in respect of one child or, if more than one child is born or adopted at once, in respect of one such birth or adoption.

Deadline for
purchase

(17) A member is not eligible to purchase credited service under this section while receiving a pension.

Lump sum
payments

(18) A lump sum payment under this section may consist of,

R.S.C. 1952,
c. 148

- (a) a partial payment by means of a transfer permitted under the *Income Tax Act* (Canada); and
- (b) a second payment of the balance of the amount required to pay for the credited service being purchased by the lump sum.

Absence
during a
school year

95.—(1) An active member may purchase credited service for days that the member is absent from the member's employment if,

- (a) the member is absent for the purpose of observing a religious holiday that is not observed by the employer;
- (b) the employer approves the absence; and
- (c) the member has accumulated at least one year of credited service before the absence.

Amount of
contribution

(2) The member shall contribute the amount of the member's contribution for each day of absence plus the amount of the corresponding employer's contribution.

Interest
payable

(3) The member shall pay interest, calculated at the standard rate, on any contribution that is delivered to the administrator more than one month after the end of the absence.

Limitation

(4) The member may purchase credited service for an absence described in subsection (1) only during the school year in which it occurs.

96.—(1) An active member may contribute for days that the member is absent from employment in education for the purpose of participating in a legal strike or because of a lockout.

Absence re
strike or
lockout

(2) The member shall contribute the amount of the member's required contribution for each day of absence plus the amount of the corresponding employer's contribution.

Amount of
contribution

(3) The member shall pay interest, calculated at the standard rate, on any contribution delivered to the administrator more than one month after the end of the absence.

Interest
payable

97.—(1) This section applies with respect to an active member who previously received a refund of required contributions under the pension plan.

For former
membership

(2) No member may purchase credited service under this section until the member has accumulated, through employment in education, seventy days of credited service in one school year after returning to active membership.

Eligibility

(3) An active member who elects to purchase credited service on or before the later of the first anniversary of the member's return to active membership and the 1st day of January, 1994 shall contribute the amount previously refunded together with interest thereon from the date the refund was made to the first day of the month in which the contribution is paid, calculated at the standard interest rate in effect on the date the refund was made.

Election
within one
year

(4) No member may purchase more days of credited service under subsection (3) than the number of days in respect of which the member received the refund.

Limit

(5) A contribution under subsection (3) shall be paid as a lump sum before the later of the third anniversary of the member's return to active membership and the 1st day of January, 1995.

Due date

(6) A member who elects to purchase credited service after the deadline referred to in subsection (3) or who fails to make the payment before the deadline in subsection (5) shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement.

Required
contribution

98.—(1) An active member may purchase credited service for a period of teaching or supervisory service outside Ontario if, before the service begins,

Approved
service
outside
Ontario

(a) the member is an active member; and

(b) the Minister approves the service.

(2) No member may purchase credited service under this section if the member is entitled to a pension under another registered pension plan, other than the *Canada Pension Plan* or the *Quebec Pension Plan*, in respect of the service.

Idem

R.S.C. 1985,
c. C-8
R.S.Q. 1977,
c. R-9

(3) No member may purchase more than fifteen years of credited service under this section.

Limit

(4) The member shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement.

Amount of
contribution

Transitional
re designated
private
schools
1983, c. 84
R.S.O. 1980,
c. 129

99.—(1) This section applies to an active member,

- (a) who is employed in an organization designated under the *Teachers' Superannuation Act, 1983* or in a school within the meaning of section 1 of the *Education Act*;
- (b) who was employed before the 1st day of September, 1986 in a private school designated under a predecessor of this Act;
- (c) who was employed on the 1st day of September, 1986 and for at least twenty days during the school year beginning on that date in an organization designated under the *Teachers' Superannuation Act, 1983* or in a school within the meaning of section 1 of the *Education Act*; and
- (d) who elected before the 1st day of September, 1986 to be excluded from the benefits and obligations of the predecessor Act.

1983, c. 84

Purchase

(2) An active member may purchase credited service in accordance with subsections 13 (4), (6) and (7) of Ontario Regulation 423/84 as they read on the 31st day of December, 1989, with necessary modifications, for past teaching service in a private school designated under a predecessor of this Act.

Idem

(3) No member is entitled to apply to purchase credited service under this section after the 31st day of December, 1991.

C. For other Employment

For active or
special war
service

100.—(1) An active member may purchase credited service for active service and for special war service.

Idem

(2) Sections 11, 11b and 13 of Ontario Regulation 423/84 as they read on the 31st day of December, 1989 apply with necessary modifications with respect to a purchase for credit under this section.

For teaching
special
subjects

101.—(1) A person may purchase credited service for his or her employment before the 1st day of September, 1957 for employment for fewer than twenty hours per week teaching music, art and crafts, physical and health education, home economics, industrial arts and crafts or another special subject.

Idem

(2) Sections 11a and 11b of Ontario Regulation 423/84 as they read on the 31st day of December, 1989 apply with necessary modifications with respect to a purchase for credit under this section.

For foreign
service as an
educator

102.—(1) An active member may purchase credited service for employment as a provider of teaching or supervisory services,

- (a) if the employment is performed in a jurisdiction other than Ontario or in a school maintained by the Government of Canada for children of members of the Armed Forces, for Canada's aboriginal peoples or for inmates of penal institutions;
- (b) if the administrator considers that the employment is similar to employment in education; and
- (c) if the member was not a member of the pension plan before the time of employment.

Eligibility

(2) No member may purchase credited service under this section if the member is entitled to a pension under another pension plan, other than the

Canada Pension Plan or the *Quebec Pension Plan*, in respect of the employment.

R.S.C. 1985,
c. C-8
R.S.Q. 1977,
c. R-9

(3) No member may purchase more than fifteen years of credited service under this section.

Limit

(4) The member shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement.

Amount of contribution

103.—(1) An active member may purchase credited service for employment not otherwise described in this Part if the member participated in a pension plan registered under the *Income Tax Act* (Canada) in respect of the employment and if, after making the purchase, the member will not be entitled to receive a pension benefit under that plan.

For other employment
R.S.C. 1952,
c. 148

(2) The member shall contribute a lump sum which is, on the date of the purchase, equal to the actuarial cost of the expected pension improvement.

Amount of contribution

D. Reciprocal Agreements

104.—(1) The administrator may enter into an agreement with the authorized representative of another pension plan respecting the terms upon which persons may transfer benefits and contributions between that plan and the pension plan.

Reciprocal agreements

(2) A reciprocal agreement must provide that a person transferring benefits and contributions to the pension plan acquires a benefit under the plan based upon the actuarial cost of the expected benefit on the date of the transfer.

Idem

105.—(1) Subject to subsection (2), reciprocal agreements entered into before the 1st day of January, 1990 by the Teachers' Superannuation Commission under section 49 of the *Teachers' Superannuation Act, 1983* are continued and expire on the 31st day of December, 1996.

Reciprocal agreements,
transitional
1983, c. 84

(2) Reciprocal agreements referred to in subsection (1) do not expire on the 31st day of December, 1996 if, before that date, the reciprocal agreement is amended to include a term described in subsection 104 (2) or if the agreement includes such a term.

Idem

E. Administration

106. An application to purchase credited service shall be made in a form provided by the administrator and shall be delivered to the administrator.

Application for purchase

107. A purchase of credited service is effective on the day that is the later of,

Effective date of purchase

(a) the day the contribution in relation to the purchase is made; or

(b) the day the member completes the qualifying period of re-employment required for eligibility to make the purchase.

108. A member who is entitled to purchase credited service for a period of employment, break in service or an absence may purchase credited service for a part of the employment, break or absence.

Purchase of partial credit

Contribution by spouse, etc. **109.**—(1) A person entitled to a death benefit in respect of a member who dies after applying for but before completing a purchase of credited service under this Part may make the contribution on behalf of the deceased member.

Idem (2) A person referred to in subsection (1) ceases to be entitled to make the contribution when a person receives payment of any death benefit in respect of the member.

PART X

ADMINISTRATION OF THE PLAN

A. General

Extension of time **110.** The administrator may extend any time limit under the pension plan before or after the expiration of the time if the administrator is satisfied that there are reasonable grounds for the extension, and may give such directions as the administrator considers appropriate consequent upon the extension.

Provision of information **111.**—(1) The administrator shall provide to each member of the pension plan the information and documents required under this Act or any other Act.

Idem, to administrator (2) A member, a person who applies for, or receives, a pension, refund or other payment from the pension fund, a board of education or an employer of a member shall provide the administrator, upon request, with such information as the administrator may require to administer the pension plan.

Idem, to members (3) The administrator shall provide within a reasonable time to a member, upon written request, all information relating to the member's contributions and entitlements under the pension plan.

Fiscal year **112.** The fiscal year of the pension plan is the twelve-month period that begins on the 1st day of January.

Actuarial calculations **113.** Actuarial calculations and determinations required under the pension plan shall be made using such actuarial assumptions, principles and methods as may be required or adopted by the administrator.

B. Pension Fund

Payments from pension fund **114.** A payment required under the pension plan must be paid from the pension fund.

Requirement to invest **115.** Moneys in the pension fund that are not required to be paid out must be invested to meet the obligations of the pension plan.

C. Surplus and Deficiency

Actuarial gain **116.**—(1) An actuarial gain disclosed by a going concern valuation made after the initial valuation described in Schedule 2 shall be applied as set out in this section.

Idem (2) The amount of an actuarial gain shall first be applied to reduce and, if possible, eliminate the payments required to liquidate any unamor-

tized balance of a solvency deficiency that is disclosed by the initial valuation or a later valuation.

(3) The amount of an actuarial gain, if any, remaining after a solvency deficiency is eliminated shall be applied to reduce and, if possible, to eliminate a going concern unfunded actuarial liability disclosed by a valuation made after the initial valuation. Idem

(4) The amount of an actuarial gain, if any, remaining after a going concern unfunded actuarial liability is eliminated under subsection (3) shall be applied to reduce and, if possible, to eliminate a going concern unfunded actuarial liability disclosed by the initial valuation. Idem

117.—(1) In this section, Surplus

“going concern assets” means the value of the assets of the pension plan, including accrued and receivable income and the present value of future contributions and investment income, determined on the basis of a going concern valuation;

“going concern liabilities” means the present value of the expenses of the pension plan and the accrued and unaccrued benefits of the plan determined on the basis of a going concern valuation;

“surplus”, in relation to the pension plan, means the amount, as determined by an actuarial valuation, by which the going concern assets of the pension fund exceeds the going concern liabilities of the fund,

- (a) calculated on a going concern basis, for the purposes of a contribution offset or a distribution of surplus, or
- (b) calculated on a plan wind up basis, for the purpose of a distribution of surplus.

(2) The Minister may direct the administrator to apply all or part of the surplus under the pension plan to offset the contributions required under sections 25 (contributions by the Minister) and 26 (contributions by employers) in accordance with subsection (5). Reduction of Minister's contributions

(3) Subject to subsection (4), the Minister shall determine the amount of surplus to be applied to offset contributions and the period during which it is to be applied. Amount

(4) The administrator shall not apply any surplus to offset contributions while the pension plan has a going concern unfunded actuarial liability or solvency deficiency within the meaning of section 1 of Schedule 2 to the Act. Restriction

(5) The amount of a person's required contributions under section 25 or 26 in a month shall be offset by the amount calculated using the formula, Apportionment

$$(A / B) \times C$$

in which,

“A” is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members in respect of whom the person is required to make employer contributions,

“B” is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members who made contributions during that period, and

"C" is the amount of the surplus to be applied to offset contributions required under sections 25 and 26 during the month.

Distribution of surplus 1987, c. 35 (6) To the extent permitted under the *Pension Benefits Act, 1987*, the Minister may direct the administrator to pay out of the pension fund all or part of the surplus under the pension plan to the persons required to make contributions under sections 25 and 26 in accordance with subsection (8).

Idem (7) A direction under subsection (6) may be made while the pension plan continues or upon its termination.

Amount (8) The amount of surplus to which a person becomes entitled shall be calculated using the formula,

$$(A / B) \times C$$

in which,

"A" is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members in respect of whom the person is required to make employer contributions,

"B" is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members who made contributions during that period, and

"C" is the amount of the surplus to be distributed.

Deficit **118.**—(1) This section applies if an actuarial valuation of the pension plan, after the initial valuation, discloses a solvency deficiency or a going concern unfunded actuarial liability.

Requirement to contribute (2) Every person required to make contributions under section 25 (contributions by the Minister) or 26 (contributions by employers) shall make additional contributions in accordance with subsection (4).

Idem 1987, c. 35 (3) Within the limit established under the *Pension Benefits Act, 1987*, the Minister shall determine the number of months during which additional contributions shall be made.

Amount (4) The amount of a person's additional contributions in a month shall be calculated using the formula,

$$(A / B) \times C$$

in which,

"A" is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members in respect of whom the person is required to make employer contributions,

"B" is the sum of the pensionable salaries, from the most recent previous valuation to the current valuation, of the members who made contributions during that period, and

"C" is the amount of the solvency deficiency or going concern unfunded actuarial liability in respect of which the additional contributions are required during the month.

PART XI

DESIGNATION OF PRIVATE SCHOOLS AND ORGANIZATIONS

119.—(1) The Lieutenant Governor in Council by order may designate a school, college, academy or other educational institution as a designated private school for the purposes of the pension plan, Private schools

- (a) if it gives instruction equivalent to that given in elementary or secondary schools in Ontario;
- (b) if it is not supported in any way by school taxes or by provincial or municipal grants; and
- (c) if it meets the criteria set out in subsection (3).

(2) The Lieutenant Governor in Council by order may designate an organization as a designated organization for the purpose of the pension plan, Organizations

- (a) if it provides services related to elementary or secondary education; and
- (b) if it meets the criteria set out in subsection (3).

(3) The school, college, academy or other educational institution or the organization, Criteria

- (a) must not be operated for profit or gain and any profits must be used to carry out its objects; and
- (b) by its governing body must undertake in writing to make the reports described in subsection (5), to pay the amounts described in subsection (6), and to perform all administrative functions required of an employer for the purposes of the pension plan.

(4) A designation comes into force on the 1st day of September next following the designation. Effective date of designation

(5) The administrator may require a designated private school or designated organization to make annual reports for the purpose of the administration of this Act and the pension plan and to supply such information as to its constitution, operations, teaching staff and otherwise as the administrator may require. Reports

(6) A designated private school or designated organization shall, in accordance with the pension plan, make the employer contributions and collect and remit the contributions by its employees who become active members of the pension plan. Payments under the plan

120.—(1) Upon the recommendation of the Minister, the Lieutenant Governor in Council by order may terminate the designation of a designated private school or a designated organization. Termination of designation

(2) The Minister may recommend the termination of a designation, Grounds

- (a) if the designated private school or designated organization, by its governing body, has requested the termination of the designation;
- (b) if the designated private school or designated organization is not complying with its undertakings; or

(c) if there is a change in the objects or mode of carrying out the objects of the designated private school or designated organization.

Notice and
submissions

(3) The Minister shall give notice of the proposed recommendation to the governing body and to the employees of the designated private school or designated organization who are active members of the pension plan.

Effective
date

(4) An order by the Lieutenant Governor in Council terminating a designation is effective on the 31st day of August following the date of the order.

Effect of
termination
of
designation

(5) Upon the termination of a designation, the employees of the private school or the organization cease to be eligible to be active members of the pension plan.

Idem

121.—(1) The Lieutenant Governor in Council by order may designate the capacity in which a person must be employed at a private school or organization in order to be eligible to become an active member in the pension plan.

Effective
date

(2) An order terminating a designation is effective on the 31st day of August next following the date of the termination of designation.

Designations,
transitional
1983, c. 84

122. The designation of a designated private school, designated organization and a designated capacity under the *Teachers' Superannuation Act, 1983* that is in effect on the 31st day of December, 1989 shall have effect as a designation made under this Part.

PART XII

ONTARIO TEACHERS' PENSION PLAN BOARD

Definition

123. In this Part, "Board" means the Ontario Teachers' Pension Plan Board.

Composition
of the Board
R.S.O. 1980,
c. 495

124.—(1) In this section, "Executive" means the executive of the Ontario Teachers' Federation as described in subsection 6 (1) of the *Teaching Profession Act*.

Appointment
of Board
members

(2) The Lieutenant Governor in Council shall appoint as Board members five individuals recommended by the Minister and three individuals recommended by the Executive.

Term of
office

(3) Subject to subsection (6), the term of office of a Board member shall not exceed three years.

Idem

(4) The Lieutenant Governor in Council shall determine the term of office of each of those Board members whose appointment is recommended by the Minister.

Idem

(5) The Executive shall determine the term of office of each of those Board members whose appointment is recommended by the Executive.

Idem,
transitional

(6) The term of office of the Board members appointed upon this section coming into force is,

(a) one year for one of the Board members recommended by the Minister and one of the Board members recommended by the Executive;

- (b) two years for two of the Board members recommended by the Minister and one of the Board members recommended by the Executive; and
- (c) three years for two of the Board members recommended by the Minister and one of the Board members recommended by the Executive.
- (7) A Board member may be reappointed upon the expiry of his or her term of office but no reappointment shall be for a term that, when added to his or her current uninterrupted period in office, exceeds six consecutive years. Reappointment
- (8) A former Board member may only be reappointed once three years has elapsed since the end of his or her most recent term of office. Idem
- (9) If a Board member ceases to hold office before his or her term expires, the Lieutenant Governor in Council, on the recommendation of the Minister or the Executive, as the case may be, shall appoint another individual to complete the term of office of the original Board member. Vacancy
- (10) The members of the Teachers' Superannuation Commission cease to hold office on the 1st day of January, 1990. Transitional
- 125.—**(1) The Board members shall elect from among themselves a chairperson. Chairperson
- (2) If the Board members do not elect a chairperson within thirty days after the office of chairperson becomes vacant, the Lieutenant Governor in Council shall appoint a Board member as chairperson. Idem
- (3) Upon this section coming into force, the Lieutenant Governor in Council shall appoint a Board member as chairperson. Idem, transitional
- (4) The term of office of a chairperson shall be determined by the Board or by the Lieutenant Governor in Council, as the case may be, and shall not exceed two years. Term of office
- (5) A chairperson is eligible to hold office for a maximum of three consecutive terms. Re-election
- 126.—**(1) The Board may appoint committees composed of Board members or individuals who are not Board members or both. Composition of committees
- (2) The term of office of a committee member is a maximum of three years. Term of office
- (3) A committee member may be reappointed upon the expiry of his or her term of office but no reappointment shall be for a term that, when added to his or her current uninterrupted period in office, exceeds six consecutive years. Reappointment
- (4) A former committee member may only be reappointed once three years has elapsed since the end of his or her most recent term of office. Idem
- 127.—**(1) A majority of the members of the Board constitutes a quorum of the Board. Quorum
- (2) A majority of the members of a committee constitutes a quorum of the committee. Idem
- 128.—**(1) Board members and committee members shall be paid such reasonable remuneration and expenses as the Board may determine. Remuneration and expenses

Idem, public servants	(2) A Board or committee member who is employed in the public service of Ontario is not entitled to be paid remuneration other than an honorarium in recognition of salary lost as a result of attending Board or committee meetings.
Idem	(3) A Board or committee member who is employed in the public service of Ontario may be reimbursed for expenses actually incurred in the performance of his or her duties as a Board or committee member.
Payment out of pension fund	(4) The remuneration and expenses of Board and committee members shall be paid out of the pension fund.
Administrative expenses	129. Administrative and operating expenses of the Board shall be paid out of the pension fund.
Staff	130.— (1) The Board may appoint such employees as it requires to administer the pension plan and manage the pension fund.
Application of R.S.O. 1980, c. 419	(2) The <i>Public Service Superannuation Act</i> applies with respect to such employees of the Board as the Board designates, as if the Board had been designated by the Lieutenant Governor in Council under section 28 of that Act.
Payment out of pension fund	(3) Employees' compensation shall be paid out of the pension fund.
Indemnification	(4) Each employee of the Board and his or her heirs, executors and administrators shall be indemnified and saved harmless by the Board from and against all costs, charges and expenses sustained or incurred in or about any action, suit, proceeding or claim against him or her for any act, omission, deed, matter or other thing made, done or permitted or omitted to be made or done in or about the execution of the duties of his or her employment by the Board, and every payment made for the indemnification is an administrative expense of the Board.
Limitation	(5) Indemnification does not extend to the act or omission to act of any person that was done or omitted to be done dishonestly or in bad faith.
Professional assistance	131.— (1) The Board may engage persons other than those appointed as its employees to provide it with professional, technical or other assistance.
Idem	(2) The Board shall retain an actuary and an auditor.
Payment	(3) Payment of the remuneration and expenses of persons engaged under this section is an administrative expense of the Board.
Powers and duties of the Board	132.— (1) The Board shall administer the pension plan, manage the pension fund and advise the Minister on matters relating to the plan and the fund.
Idem	(2) The Board may exercise such powers as are necessary to carry out its duties.
Idem	(3) The Board may make rules for the conduct and management of its affairs and for the practice and procedure to be followed in matters before it.
Re property	(4) The Board may, (a) acquire, hold in its own name and dispose of real property or an interest in real property for occupation and use by the Board or as an investment by the pension fund;

- (b) participate as a partner or otherwise in a syndicate or association of persons in the acquisition, holding, management or disposition of property;
- (c) enter into an agreement to administer another pension plan and to administer a benefit plan for retired members and to recover the costs of doing so from that plan.

133.—(1) The Board may delegate in writing any of its powers or duties to a committee, an employee of the Board or a person retained by the Board subject to a limitation or condition set out in the delegation. Delegation by Board

(2) With the approval of the Board, a committee of the Board may delegate in writing any of its powers or duties to an employee of the Board. Idem, by committee

134.—(1) The Board shall at the close of each fiscal year file with the Minister an annual report upon the affairs of the Board. Annual report

(2) The Minister shall submit the Board's annual report to the Lieutenant Governor in Council and lay it before the Assembly if it is in session or, if not, at the next session. Tabling of report

(3) The Board shall provide the Minister with a copy of every actuarial valuation of the pension plan that the Board intends to file with the Pension Commission of Ontario at least forty-five days before it is filed. Actuarial valuation

(4) The Board shall not file an actuarial valuation with the Pension Commission of Ontario until the Minister advises the Board in writing that he or she agrees that the valuation be filed. Idem

(5) The Board shall provide the Minister with a copy of every auditor's report on the pension fund within thirty days after the Board receives it. Auditor's report

(6) The Minister may audit, at his or her own expense, the administration of the pension plan and the management of the pension fund and the Board shall co-operate in the conduct of the audit and shall provide any information required by the auditor. Minister's audit

(7) The Board shall make such further reports and provide the Minister with such information as the Minister from time to time requires. Further reports

SCHEDULE 2

TRANSITIONAL VALUATION OF THE PENSION PLAN

1.—(1) In this section and in sections 2 and 3 and subsection 4 (2), "actuarial gain" and "actuarial loss" mean, respectively, the sum, if positive, or the sum, if negative, of, Initial unfunded liability

- (a) the gain to the pension plan during the period since the review date of the immediately preceding going concern valuation resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based,
- (b) the amount by which the going concern liabilities decrease as a result of an amendment to the plan, and
- (c) the amount by which the going concern liabilities decrease or the going concern assets increase as a result of a change in actuarial

methods or assumptions upon which the current going concern valuation is based, as of the review date for a going concern valuation,

but clause (a), (b) or (c) or any combination thereof shall be counted as a negative in the calculation of the sum if,

(d) the experience of the plan results in a loss rather than a gain,

(e) an amendment increases the going concern liabilities, or

(f) a change in actuarial methods or assumptions results in an increase in going concern liabilities or a decrease in going concern assets, as the case may be;

“going concern assets” means the value of the assets of the pension plan, including accrued and receivable income and the present value of future contributions and investment income, determined on the basis of a going concern valuation;

“going concern liabilities” means the present value of the expenses of the pension plan and the accrued and unaccrued benefits of the plan determined on the basis of a going concern valuation;

“going concern unfunded actuarial liability” means the excess of going concern liabilities over going concern assets;

“going concern valuation” means a valuation of assets and liabilities of the pension plan using methods and actuarial assumptions considered by the actuary who valued the plan to be in accordance with generally accepted actuarial principles and practices for the valuation of a continuing pension plan;

“initial valuation” means the going concern valuation of the pension plan as at the 1st day of January, 1990 required by section 3;

“past service unfunded actuarial liability” means the amount of going concern unfunded actuarial liability that results from the provision of benefits with respect to prior employment for which no benefit was provided at the time of the employment or from an amendment to the pension plan that provides benefits for employment prior to the date of the amendment if the employment had not previously been recognized for purposes of the provision of pension benefits;

1987, c. 35 “review date” means the last date of the period under review in a report required under the *Pension Benefits Act, 1987*;

“solvency assets” means the sum determined in accordance with subsections (2) and (3) of,

(a) the market value of investments held by the pension plan or a value related to the market value by means of an averaging method that stabilizes short-term fluctuations of the market values over a period of not more than five years, plus any cash balances and accrued or receivable income items,

(b) the present value of any special payments required to liquidate any past service unfunded actuarial liability established on or after the 1st day of January, 1988,

(c) the present value of any special payments other than those referred to in clause (b) established on or after the 1st day of Janu-

ary, 1988 that are scheduled for payment within five years after the review date, and

- (d) the present value of future special payments resulting from the initial valuation;

"solvency deficiency" means the excess of the solvency liabilities over the solvency assets;

"solvency gain" means the sum, if positive, of,

- (a) the gain to the pension plan during the period since the review date of the immediately preceding valuation of solvency assets and solvency liabilities resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based, and
- (b) the amount by which the solvency liabilities decrease or the solvency assets increase during the period since the review date of the immediately preceding valuation of solvency assets and solvency liabilities as a result of a change in the actuarial methods or assumptions upon which the current valuation of solvency assets and solvency liabilities is based,

but either of clause (a) or (b) shall be counted as a negative in the calculation of the sum if the experience of the plan results in a loss rather than a gain or if a change in actuarial methods or assumptions results in an increase in solvency liabilities or a decrease in solvency assets, as the case may be;

"solvency liabilities" means an amount that is not less than the liabilities of the pension plan determined as if the plan had been wound up, taking into account liabilities for the adjustment for inflation under the plan and the requirements of section 75 of the *Pension Benefits Act, 1987*.

1987, c. 35

(2) The present values referred to in clauses (b), (c) and (d) of the definition of "solvency assets" in subsection (1) shall be determined on the basis of the assumed interest rate used in determining whether there is a solvency deficiency.

Present values re solvency assets

(3) In calculating the solvency assets, if there is no market value for an investment of the pension plan and the investment is issued or guaranteed by a government, the book value of the investment may be used instead of market value.

If no market value

(4) This section and sections 2, 3 and 4 prevail over any conflicting provisions of the *Pension Benefits Act, 1987* or of a regulation made under that Act.

Conflicting provisions
1987, c. 35

2.—(1) For each month in the period commencing with the 1st day of January, 1990 and ending with the last day of the month in which the initial valuation is approved by the Pension Commission of Ontario, the Treasurer shall pay to the pension fund from the Consolidated Revenue Fund the amount shown for that month in the Table to this section.

Interim payments of unfunded liability

(2) The Treasurer may, with the appropriate adjustment for interest, at any time prepay one or more of the outstanding payments shown in the Table.

Prepayment

(3) Payments made under subsection (1) or (2) shall be credited against any special payments that are to be made in the same period to liquidate a going concern unfunded actuarial liability disclosed by the initial valuation,

Application of interim payments

and any amount by which the payments made under those subsections are less than the special payments for that period as a result of the initial valuation shall be paid by the Treasurer to the pension fund with the appropriate adjustment for interest from the Consolidated Revenue Fund within fifteen months following the month when the initial valuation is approved by the Pension Commission of Ontario.

Table

Interim Payments of Unfunded Liability

<i>Item</i>	<i>Date of Payment</i>	<i>Amount of Payment</i>
1.	January 1, 1990	\$15,640,000
2.	February 1, 1990	15,710,000
3.	March 1, 1990	15,780,000
4.	April 1, 1990	15,851,000
5.	May 1, 1990	15,922,000
6.	June 1, 1990	15,993,000
7.	July 1, 1990	16,065,000
8.	August 1, 1990	16,136,000
9.	September 1, 1990	16,209,000
10.	October 1, 1990	16,281,000
11.	November 1, 1990	16,354,000
12.	December 1, 1990	16,427,000
13.	January 1, 1991	16,500,000
14.	February 1, 1991	16,574,000
15.	March 1, 1991	16,648,000
16.	April 1, 1991	16,723,000
17.	May 1, 1991	16,798,000
18.	June 1, 1991	16,873,000
19.	July 1, 1991	16,948,000
20.	August 1, 1991	17,024,000
21.	September 1, 1991	17,100,000
22.	October 1, 1991	17,176,000
23.	November 1, 1991	17,253,000
24.	December 1, 1991	17,330,000
25.	January 1, 1992	17,408,000
26.	February 1, 1992	17,486,000
27.	March 1, 1992	17,564,000
28.	April 1, 1992	17,643,000
29.	May 1, 1992	17,721,000
30.	June 1, 1992	17,801,000
31.	July 1, 1992	17,880,000
32.	August 1, 1992	17,960,000
33.	September 1, 1992	18,041,000
34.	October 1, 1992	18,121,000
35.	November 1, 1992	18,202,000
36.	December 1, 1992	18,284,000

Initial
valuation

3.—(1) As soon as practicable after the 31st day of December, 1989, the Board shall cause to be prepared a going concern valuation of the pension plan as at the 1st day of January, 1990, and the valuation shall include the adjustment of pensions for inflation under the plan.

Idem

(2) The initial valuation shall,

(a) comply with this section and section 4;

- (b) be delivered by the actuary to the Board and to the Minister and the Treasurer, and shall be filed with the Pension Commission of Ontario by the Board only after the Minister and the Treasurer have advised the Board in writing that they agree that the initial valuation delivered to them be filed; and
- (c) for all purposes of the pension plan, determine the going concern unfunded actuarial liability or surplus of the plan as at the 1st day of January, 1990.

(3) Any going concern unfunded actuarial liability disclosed by the initial valuation shall be liquidated by a series of special payments from the Consolidated Revenue Fund to be made over the forty years commencing on the 1st day of January, 1990.

Liability liquidated

(4) Each special payment mentioned in subsection (3) shall be calculated as a constant percentage of the projected future earnings from employment used to calculate pension benefits during the forty years commencing on the 1st day of January, 1990 of all persons who are members of the pension plan on that date and of those who are expected to join the plan during those forty years.

Calculation of special payments

(5) The present value, as at the 1st day of January, 1990, of the full series of special payments shall equal the amount of the going concern unfunded actuarial liability to be liquidated.

Present value of special payments

(6) The actuary shall prepare and submit with the initial valuation a schedule showing the dollar amount of each special payment in the first six years of the series and the formula by which the dollar amount of the remaining special payments in the series is determined.

Schedule of payments

(7) The Treasurer may, at any time, prepay a part or all of any outstanding special payments or may make additional payments to the pension fund to be applied, with appropriate adjustments for interest, as the Treasurer shall direct to reduce the going concern unfunded actuarial liability disclosed by the initial valuation, and every such payment may be paid out of the Consolidated Revenue Fund.

Prepayments and additional payments

- (8) Subject to subsection (4),
- Consistent assumptions
- (a) the projected future earnings from employment used to calculate pension benefits shall be determined using actuarial assumptions consistent with those made in the initial valuation;
 - (b) the present value of the series of special payments shall be determined using the interest rate used in the initial valuation; and
 - (c) all other actuarial assumptions made in the determination of the series of special payments shall be, so far as possible, consistent with actuarial assumptions made in the initial valuation.

4.—(1) A going concern valuation of the pension plan made after the initial valuation shall include the value of the outstanding special payments calculated under section 3 that remain to be made to liquidate the going concern unfunded actuarial liability disclosed by the initial valuation, and the actuary shall prepare and submit with the valuation a schedule showing the amount, determined from the formula mentioned in subsection 3 (6), of each remaining special payment for the next six years or for the period of time for which special payments remain to be made, whichever is shorter.

Subsequent valuations

Special
payments as
solvency
assets

(2) For the purpose of determining a solvency gain or solvency deficiency under the pension plan, solvency assets include the present value of future special payments required under section 3.

When special
payments
cease

(3) When the special payments made as a result of the initial valuation and the prepayments and additional payments made under subsection 3 (7) have liquidated the going concern unfunded actuarial liability disclosed by the initial valuation, no further payments shall be made, notwithstanding that the period of forty years used in the initial valuation has not expired.

Determina-
tion of
contribution
rate

5.—(1) In the initial valuation the actuary shall state the contribution rate that, in his or her opinion, is required to ensure that the present value of future contributions and the investment income derived from those contributions is at least equal to the present value of the unaccrued cost of the benefits of the pension plan plus the present value of the future expenses of the plan.

Amendment

(2) If the contribution rate stated by the actuary in the initial valuation is materially different from the contribution rate set out in the pension plan, the Lieutenant Governor in Council shall amend the plan to replace the existing contribution rate with that stated in the initial valuation.

Bill 67

An Act to establish the East/Central Ontario Recreational Trails Commission

Mr. Pollock



1st Reading December 10th, 1987

2nd Reading

3rd Reading

Royal Assent

*Continued from the 1st Session by an Order of the
Legislative Assembly of March 2nd, 1989.*

EXPLANATORY NOTE

The Bill establishes the East/Central Ontario Recreational Trails Commission that may purchase property in Eastern and Central Ontario in order to establish recreational trails.

Bill 67

1989

An Act to establish the East/Central Ontario Recreational Trails Commission

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Commission” means the East/Central Ontario Recreational Trails Commission established under section 2;

“Marmora-Lake St. Peter subdivision” means the one hundred and fifty-one kilometres of land, owned by Canadian National Railways, that runs between Glen Ross in Hastings County and Lake St. Peter in Hastings County and that formerly was used as a railway line;

“prescribed” means prescribed by regulations;

“recreational purposes” means skiing, walking, snowmobiling, snow shoeing, use of recreational vehicles and similar activities.

2. There is hereby established a commission to be known as the East/Central Ontario Recreational Trails Commission.

Commission
established

3.—(1) The Commission shall be composed of not fewer than seven members appointed by the Lieutenant Governor in Council.

Membership

(2) The Lieutenant Governor in Council may appoint a member of the Commission to be its chairperson.

Chairperson

(3) A majority of the members of the Commission constitutes a quorum.

Quorum

4.—(1) The Commission may,

Powers

- (a) purchase property in Central and Eastern Ontario, including the Marmora-Lake St. Peter subdivision, in order to establish recreational trails; and
- (b) erect fences, signs and bridges and perform other maintenance on property purchased by the Commission as the Commission considers necessary.

Additional
properties

(2) Notwithstanding clause (1) (a), the Commission may purchase additional properties as it deems necessary and within its mandate.

Local
committees

5.—(1) The Commission shall appoint a committee composed of not less than seven members to carry out the daily management of each recreational trail.

Composition

(2) The members of each committee shall be appointed in the following manner:

- 1. No less than two members shall be appointed from the trail association in the county or region where the trail is located, if there is a trail association.
- 2. No less than five members shall be appointed from the municipality or municipalities where the trail is located.

Regulations

6. The Lieutenant Governor in Council may make regulations prescribing the duties of the members of the Commission.

Commence-
ment

7. This Act comes into force on the day it receives Royal Assent.

Short title

8. The short title of this Act is the *East/Central Ontario Recreational Trails Commission Act, 1989*.

Bill 68

An Act to amend certain Acts respecting Insurance

The Hon. M. Elston
Minister of Financial Institutions



1st Reading October 23rd, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The purposes of the Bill are,

- (a) to establish the Ontario Insurance Commission;
- (b) to provide for a no-fault benefits scheme to replace the current Schedule C;
- (c) as part of the regulation of automobile insurance, to establish a new dispute resolution system for resolving disputes related to no-fault benefits;
- (d) to provide for direct compensation from an insured's own insurer for property damage caused by third persons;
- (e) to provide an incentive for persons to obtain insurance;
- (f) to strengthen the regulatory system governing insurers in Ontario;
- (g) to augment the means of enforcing the *Insurance Act*;
- (h) to increase consumer protection respecting automobile insurance;
- (i) to eliminate the corporations tax payable in respect of insurance for private passenger automobiles;
- (j) to permit the naming of persons as "excluded drivers" under contracts of automobile insurance;
- (k) to improve the collection of statistical data;
- (l) to update several administrative provisions of the *Insurance Act*.

The principal provisions of the Bill are as follows:

SECTIONS 1 to 4, 8, 12, 13, 16 to 29, 33 to 35, 38, 41, 43, 69 to 75, 81, 82 and 88 to 91.

The Ontario Insurance Commission is established as the new regulator of the insurance industry. The Commission will be headed by the Commissioner of Insurance who will have, among his or her powers, the power to approve automobile insurance rates. He or she will also be responsible for appeals from decisions of the Superintendent. The Superintendent of Insurance and the Director of Arbitrations will also be members of the Commission. Complementary amendments are made to other Acts.

SECTIONS 15, 37, 39, 44 to 46, 48 to 51, 54, 56 to 64, 80, 82, 83 and 85 to 87. Provision is made for a new no-fault scheme to replace the existing Schedule C. Access to traditional tort remedies will be restricted to cases of death and cases of permanent serious disfigurement or impairment. The legal concept known as the "collateral source rule" is eliminated. Complementary amendments are made to other Acts.

SECTIONS 3, 37 and 65. Disputes over entitlement to no-fault benefits will be resolved under a new dispute resolution system. Under this system, disputes will first be referred by either the insurer or the insured person to compulsory mediation. If mediation fails, an insured person will have the option of proceeding by way of arbitration or litigation to resolve the claim.

SECTIONS 1, 3, 5 to 10, 14, 36, 37, 66, 67, 68 and 84. Among the administrative changes made in order to update the *Insurance Act* are the appointment and powers of the Superintendent, the protection of Crown employees from liability in civil proceedings, and record-keeping requirements for the Superintendent. Changes to the regulation-making powers of the Lieutenant Governor in Council are complementary to other amendments to the Act.

SECTIONS 3, 10, 12, 37 and 79. Comprehensive powers to enforce the *Insurance Act* are consolidated in a new Part XX of the Act. An offence is created respecting the obstruction of examinations made under the Act. Increased penalties are provided, and the limitation period for legal proceedings under the Act is extended.

SECTIONS 6, 7 and 10. Among the administrative provisions made in order to streamline enforcement of the *Insurance Act* are authorization to the Commission to issue certificates that may be used in evidence in legal proceedings, and provisions governing service of documents.

SECTIONS 10, 30 to 32, 78 and 79. The regulatory system is strengthened. The Superintendent is empowered to collect information from insurers through annual and interim returns filed by insurers, to make specific inquiries to, and periodically to examine the condition of affairs of, insurers. The powers of persons conducting examinations under the Act are set out. The duty to furnish information is clarified. The Superintendent may issue compliance orders.

SECTIONS 11, 41, 42, 45, 47, 76 and 77. Consumer protection measures respecting automobile insurance are augmented. The Commission is authorized to publish information about insurers that is in the public interest. Insurers are required to supply prescribed information to applicants for insurance and to insured persons. The category of "unfair acts and practices" by insurers is expanded.

SECTION 55. Insureds will collect damages from their own insurers for property damage caused by third persons. They will also be required to provide their insurer with details of any accident in which more than \$700 in property damage is done. This will improve the collection of statistical data by insurers.

SECTION 56. Under the proposed subsection 231 (5a) of the Act, uninsured motorists will be unable to recover for property damage. This will encourage compliance with the *Compulsory Automobile Insurance Act* and other statutes which require insurance.

SECTION 83. The tax payable under subsection 66 (1) of the *Corporations Tax Act* in respect of insurance for private passenger automobiles is eliminated.

SECTIONS 39, 40, 48, 49, 52, 53, 56, 57, 82 and 86. Provision is made for an endorsement to a contract of automobile insurance naming an "excluded driver". If an excluded driver drives an automobile that is otherwise insured under the contract, the automobile is no longer insured, and persons otherwise insured under the contract are no longer insured, although they are entitled to medical and accident benefits under the *No-Fault Benefits Schedule*. Complementary amendments are made to other Acts.

Bill 68

1989

An Act to amend certain Acts respecting Insurance

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 67, section 1, is further amended by adding thereto the following paragraph:

2a. “accountant” means a person who is licensed under the *Public Accountancy Act*.

R.S.O. 1980,
c. 405

(2) Paragraph 7 of section 1 of the said Act is repealed.

(3) Section 1 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 1, is further amended by renumbering paragraph 13a as paragraph 13d and by adding thereto the following paragraphs:

13a. “class of risk exposure”, in relation to automobile insurance, includes all rules, procedures and factors used to determine the rates for each coverage and category of automobile insurance;

13b. “Commission” means the Ontario Insurance Commission;

13c. “Commissioner” means the commissioner of insurance appointed under section 3;

.

15a. “Director” means the director of arbitrations appointed under section 6;

.

56a. "rate", in relation to automobile insurance, means all amounts payable under contracts of automobile insurance for an identified risk exposure whether expressed in dollar terms or in some other manner and includes commissions, surcharges, fees, discounts, rebates and dividends.

(4) Paragraph 39 of section 1 of the said Act is repealed and the following substituted therefor:

39. "Minister" means the Minister of Financial Institutions.

(5) Paragraph 62 of section 1 of the said Act is repealed and the following substituted therefor:

62. "Superintendent" means the superintendent of insurance appointed under section 4.

2. The heading to Part I of the said Act is repealed and the following substituted therefor:

PART I

ONTARIO INSURANCE COMMISSION

ORGANIZATION

3. Sections 2, 3, 4, 5 and 6 of the said Act are repealed and the following substituted therefor:

Commission
established

2.—(1) A commission to be known as the Ontario Insurance Commission is established.

Composition
of
Commission

(2) The Commission shall be composed of the Commissioner, the Superintendent and the Director.

Duties

(3) It is the duty of the Commission to administer this Act and to supervise generally, and make recommendations to the Minister in respect of, the business of insurance in Ontario.

Powers

(4) The Commission may exercise such powers as are necessary to carry out its functions under this Act.

Commis-
sioner

3.—(1) The Lieutenant Governor in Council shall appoint a commissioner of insurance who shall carry out the duties and exercise the powers of the Commissioner under this Act and every other Act that assigns duties to or confers powers on the Commissioner.

(2) The Commissioner is the chief executive officer of the Commission. Idem

(3) If the Commissioner is absent or if there is a vacancy in the office of the Commissioner, such person as may be designated by the Commissioner shall act as and have all the powers of the Commissioner. Acting Commissioner

(4) The Commissioner may delegate in writing any of his or her powers or duties to an employee of the Commission, subject to any limitation or condition set out in the delegation. Delegation

(5) The Commissioner may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Commissioner relating to such hearings. Idem

4.—(1) The Lieutenant Governor in Council shall appoint a superintendent of insurance who shall carry out the duties and exercise the powers of the Superintendent under this Act and every other Act that assigns duties to or confers powers on the Superintendent. Superintendent

(2) The Superintendent is the chief administrative officer of the Commission and shall carry out such duties respecting the administration of the Commission as may be assigned by the Commissioner. Idem

(3) If the Superintendent is absent or if there is a vacancy in the office of the Superintendent, such person as may be designated by the Superintendent shall act as and have all the powers of the Superintendent. Acting Superintendent

(4) The Superintendent may delegate in writing any of his or her powers or duties, including duties assigned to the Superintendent by the Commissioner, to an employee of the Commission, subject to any limitation or condition set out in the delegation. Delegation

(5) The Superintendent may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Superintendent relating to such hearings. Idem

5.—(1) Such employees as are required for the purposes of the Commission may be appointed under the *Public Service Act*. Staff
R.S.O. 1980,
c. 418

(2) The Commission may engage persons, other than those appointed under subsection (1), to provide professional, tech- Professional assistance

nical or other assistance to the Commission and may establish the duties and terms of engagement and provide for the payment of the remuneration and expenses of such persons.

Director of
arbitrations

6.—(1) The Lieutenant Governor in Council shall appoint a director of arbitrations who shall carry out the duties and exercise the powers of the Director under this Act.

Acting
Director

(2) If the Director is absent or if there is a vacancy in the office of Director, such person as may be designated by the Director shall act as and have all the powers of the Director.

Delegation

(3) The Director may delegate in writing any of his or her powers or duties to an employee of the Commission, subject to any limitation or condition set out in the delegation.

Idem

(4) The Director may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Director relating to such hearings.

Accident
benefits
advisory
committee

6a. The Minister shall appoint an accident benefits advisory committee to make recommendations concerning persons qualified to be arbitrators, to advise the Commission concerning procedures to be used during arbitrations and to advise on such other matters as the Commission or the Minister may refer to the committee.

Arbitrators

6b.—(1) The Commissioner shall establish and maintain a roster of candidates chosen by him or her from the persons recommended by the accident benefits advisory committee to conduct arbitrations under this Act.

Appointment

(2) The Director shall appoint arbitrators only from the roster of candidates.

Mediators

6c. The Commissioner may appoint employees of the Commission or other persons to act as mediators.

Medical, etc.,
advisory
panel

6d.—(1) The Commissioner shall appoint a medical and rehabilitation advisory panel to assist and advise the Director and arbitrators under this Act.

Appointment

(2) The panel shall consist of medical practitioners who are qualified to conduct medical assessments and other persons who are qualified to conduct rehabilitation assessments.

Chair

(3) The Commissioner shall designate a member of the panel to be its chair.

6e.—(1) No action or other proceeding for damages shall be instituted against any person acting under the authority of this Act or any Act listed in the Schedule to this subsection for any act done in good faith in the performance or intended performance of the person’s duty or in the exercise or intended exercise of the person’s powers or for any alleged neglect or default in the performance or execution in good faith of the person’s duties or powers.

Immunity

SCHEDULE TO SUBSECTION (1)

1.

Compulsory Automobile Insurance Act.

R.S.O. 1980,
c. 83
2.

Motor Vehicle Accident Claims Act.

R.S.O. 1980,
c. 298
3.

Prepaid Hospital and Medical Services Act.

R.S.O. 1980,
c. 388
4.

Registered Insurance Brokers Act.

R.S.O. 1980,
c. 444

(2) Notwithstanding subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject.

Crown
liability
R.S.O. 1980,
c. 393

(3) Except with the consent of the Commissioner, no person mentioned in subsection (1), other than the Commissioner, shall be required to testify in a civil proceeding, in a proceeding before the Commissioner or in a proceeding before any other tribunal respecting information obtained in the discharge of his or her duties under this Act or any Act listed in the Schedule to subsection (1).

Testimony in
civil
proceedings

(4) Except with the consent of the Minister, the Commissioner shall not be required to testify in a civil proceeding or in a proceeding before any tribunal respecting information obtained in the discharge of his or her duties under this Act or any Act listed in the Schedule to subsection (1).

Idem

6f. The Commissioner, the Superintendent, the Director and the employees of the Commission shall not be interested, directly or indirectly, other than as a policyholder, in any insurer, agent, adjuster or broker doing business in Ontario.

Independence
of Commis-
sioner and
others

6g.—(1) The Commissioner shall at the close of each fiscal year file with the Minister an annual report upon the affairs of the Commission.

Annual
report

Further
reports

(2) The Commissioner shall make such further reports and provide the Minister with such information as the Minister from time to time requires.

Tabling of
reports

(3) The Minister shall submit the reports to the Lieutenant Governor in Council and lay them before the Legislative Assembly if it is in session or, if not, at the next session.

Assessment
of insurers

6h.—(1) The Lieutenant Governor in Council may assess all insurers with respect to all expenses incurred and expenditures made by the Commission in the conduct of its affairs and an insurer shall pay the amount assessed against it.

Idem

(2) If an assessment is made under subsection (1), the share of a particular insurer shall be determined in the manner prescribed by regulation.

DECISIONS, HEARINGS AND APPEALS

Orders

6i.—(1) The Commissioner shall determine matters before him or her by order and may make an order subject to such conditions as are set out in the order.

Interim
orders

(2) The Commissioner may make interim orders pending the final order in a matter before him or her.

Proceedings
before the
Commissioner

6j.—(1) For a proceeding before the Commissioner, the Commissioner may,

- (a) make rules for the practice and procedure to be observed;
- (b) determine what constitutes adequate public notice;
- (c) before or during the proceeding, conduct any inquiry or inspection the Commissioner considers necessary;
- (d) in determining any matter, consider any relevant information obtained by the Commission in addition to evidence given at the proceeding, if he or she first informs the parties to the proceedings of the additional information and gives them an opportunity to explain or refute it.

Costs

(2) The costs of and incidental to a proceeding before the Commissioner are in his or her discretion and may be fixed in any case at a sum certain or may be assessed.

(3) The Commissioner may order by whom and to whom any costs are to be paid and by whom they are to be assessed and allowed. Idem

(4) The Commissioner may establish a scale under which such costs shall be assessed. Idem

(5) Costs awarded under this section may include the costs of the Commission, regard being had to the time and expenses of the Commission. Idem

6k.—(1) The Commissioner or the Superintendent, as the case may be, may reconsider and vary or revoke a decision or order made by him or her if he or she considers it advisable to do so. Variation of decisions

(2) The Commissioner or the Superintendent, as the case may be, is not required to hold a hearing when reconsidering his or her decision, but he or she shall allow the parties to make written submissions. No hearing

6-l.—(1) A person affected by a decision of the Superintendent may appeal the decision to the Commissioner. Appeal from Superintendent's decision

(2) A request for an appeal shall be in writing and shall be delivered to the Commission within thirty days after the date of the Superintendent's decision. Request for appeal

(3) The Commissioner shall hold a hearing of an appeal. Hearing

(4) The parties to an appeal are the person who requests the appeal, the Superintendent and such other persons as the Commissioner may specify. Parties

(5) Upon hearing an appeal, the Commissioner may confirm, vary or rescind the decision appealed from or substitute his or her decision for that of the Superintendent. Power of the Commissioner

6m.—(1) The Lieutenant Governor in Council may require the Commissioner to examine and report on any question related to insurance that, in the opinion of the Lieutenant Governor in Council, requires a public hearing. Reference hearings

(2) The Commissioner shall determine who may be a party to a reference hearing. Parties

6n.—(1) This section applies with respect to proceedings under this Act before the Commissioner, the Superintendent and the Director and before an arbitrator. Exclusive jurisdiction

Idem

(2) A person referred to in subsection (1) has exclusive jurisdiction to exercise the powers conferred upon him or her under this Act and to determine all questions of fact or law that arise in any proceeding before him or her and, unless an appeal is provided under this Act, his or her decision thereon is final and conclusive for all purposes.

Decisions,
etc., not
stayed

(3) An application for judicial review and any appeal from an order of the court on the application does not stay the decision made under this Act.

Court may
grant stay

(4) Notwithstanding subsection (3), a judge of the court to which the application is made or a subsequent appeal is taken may grant a stay until the disposition of the judicial review or appeal.

Power to
summon
witnesses,
etc.

60.—(1) For the purpose of exercising the powers and performing their duties under this or any other Act, the Commissioner, the Superintendent, the Director and every arbitrator has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions.

Power to
require
evidence

(2) A person referred to in subsection (1) may require to be made or may take and receive affidavits or depositions and may examine witnesses upon oath.

Employment
of stenog-
rapher

(3) The evidence and proceedings in any matter before a person referred to in subsection (1) may be reported by a stenographer who has taken an oath before the person to report the evidence and proceedings faithfully.

Oaths

(4) A person referred to in subsection (1) may administer and certify an oath required under this Act.

4. The said Act is amended by inserting before section 7 the following heading:

ADMINISTRATION

5. The said Act is further amended by adding thereto the following section:

Records

7a. Records required under this Act to be prepared and maintained by the Commissioner or the Superintendent may be in bound or loose-leaf form or in photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage

device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time.

6. Subsections 8 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) The Commission may issue a certificate, Certificates

- (a) stating that on a stated day a person was or was not licensed under this Act, or that the licence was renewed, suspended, revived, revoked or cancelled on a stated day;
- (b) stating that a copy of, or extract from, a document or thing in the custody of the Commission is a true copy of, or extract from, the original;
- (c) stating the amount payable to the Treasurer of Ontario under subsection 14 (3) or (4);
- (d) stating the amount payable for an audit under subsection 80 (4);
- (e) stating whether a document was served or delivered under this Act;
- (f) stating whether any document required under this Act was filed;
- (g) stating whether a document or notification was received or issued by the Commissioner, the Superintendent, the Director, an arbitrator or a mediator under this Act;
- (h) giving particulars of the custody of any book, record, document or thing;
- (i) stating when the facts upon which a proceeding for an offence are based first came to the knowledge of the Commissioner or the Superintendent.

(3) The Commissioner or the Superintendent may sign certificates on behalf of the Commission. Idem

7. The said Act is further amended by adding thereto the following section:

8a.—(1) In this section, “official document” means a certificate, licence, order, decision, direction, inquiry or notice under this Act. Official documents as evidence

Idem

(2) An official document that purports to be signed on behalf of the Commission shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or the position of the person appearing to have signed the official document.

True copies
as evidence

(3) A true copy certified by the Commission under clause 8 (2) (b) is admissible in evidence to the same extent as and has the same evidentiary value as the document or thing of which it is a copy.

8. Section 9 of the said Act is repealed and the following substituted therefor:

Right to a
licence

9. It is the duty of the Superintendent to determine the right of an insurer in Ontario to be licensed under this Act but nothing in this section affects the right of the Lieutenant Governor in Council or the Commissioner to suspend or cancel any licence in the exercise of his or her authority under this Act.

9. Subsection 10 (3) of the said Act is repealed.

10. Sections 11, 12, 13, 14 and 15 of the said Act are repealed and the following substituted therefor:

Inquiries

11. The Superintendent or a person designated by the Commissioner may direct to an insurer any inquiry related to the contracts, financial affairs or the acts and practices of the insurer, and the insurer shall answer promptly, explicitly and completely.

Right of
access

12. The Superintendent or a person designated by the Commissioner may at any reasonable time examine the books, securities, documents and things related to the business of an insurer, agent, adjuster or broker.

Duty to
furnish
information

13.—(1) Persons who are licensed under this Act, officers and agents of an insurer and the chief agent of an insurer that has its head office outside Ontario shall, on request, furnish the Superintendent or a person designated by the Commissioner with full information,

- (a) relating to any contract of insurance issued by an insurer;
- (b) relating to any settlement or adjustment under a contract of insurance; or

- (c) respecting any activities related to the business of insurance.

(2) An insured person shall, on request, furnish the Superintendent or person designated by the Commissioner with full information relating to any contract of insurance issued to the insured person or to any settlement or adjustment affecting the insured person under a contract of insurance. Idem

14.—(1) Once each year or more frequently as the Superintendent may consider appropriate for all insurers or for a particular insurer, the Superintendent or a person appointed by the Superintendent, Examination of insurers

- (a) shall examine an insurer's statement made under section 81;
- (b) may make such inquiries as are necessary to ascertain the insurer's condition and ability to meet its obligations as and when they become due; and
- (c) may make such inquiries as are necessary to ascertain whether the insurer has complied with the requirements of this Act applicable to its transactions.

(2) Subsection (1) does not apply so as to require an examination of an insurer, Exception

- (a) that is a mutual benefit society with fewer than 300 members; or
- (b) in respect of which the Superintendent adopts an examination by another government.

(3) The Superintendent may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets and liabilities of an insurer and the insurer shall pay the Treasurer of Ontario for the cost of the preparation of the abstracts or the valuation upon receiving a certificate of the Commission stating the amount payable. Preparation of abstracts, valuation

(4) Where the office of an insurer at which an examination is made under this section is outside Ontario, the insurer shall pay the Treasurer of Ontario for the cost of the examination upon receiving a certificate of the Commission stating the amount payable. Expenses of examination

Service of
documents

15.—(1) Service of any document for any purpose of this Act, where the method is not otherwise specified, may be made,

- (a) on any person, by personal service on the person to be served;
- (b) on an insurer, by first class registered mail addressed to the insurer or its chief executive officer at the insurer's head office in Ontario as identified in the records of the Superintendent;
- (c) on a person who is not an insurer, by first class registered mail addressed to the person's last known address;
- (d) on any person, by leaving a copy of the document with the solicitor, if any, of the person to be served, or with an employee in the solicitor's office; or
- (e) on any person, by telephone transmission of a facsimile of the document in accordance with subsection (7).

Service at
place of
residence

(2) Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

- (a) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and
- (b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.

Effective
date of
service

(3) Service at a person's place of residence under subsection (2) is effective on the fifth day after the document is mailed.

Requirements
for service by
mail

(4) Service by first class registered mail is not effective unless a post office receipt for the mail bearing a signature that purports to be the signature of the person to be served or of an officer of an insurer is received by the sender.

Effective
date of
service by
mail

(5) Service by first class registered mail is effective on the date on which the sender of the mail receives the receipt described in subsection (4).

(6) Service on a solicitor is not effective unless the solicitor endorses on the document or a copy of it an acceptance of service on behalf of his or her client and the date of the acceptance.

Acceptance
of service by
a solicitor

(7) A document that is served by telephone transmission shall include a cover page indicating,

Requirements
for service by
facsimile

- (a) the sender's name, address and telephone number;
- (b) the name of the person to be served;
- (c) the date and time of transmission;
- (d) the total number of pages transmitted, including the cover page;
- (e) the telephone number from which the document is transmitted; and
- (f) the name and telephone number of a person to contact in the event of transmission problems.

15a.—(1) Where an attempt is made to effect service under subsection 15 (1) on an insurer or an agent, and for any reason service cannot be effected, the document may be served on the Superintendent and such service shall be deemed to be service on the insurer or agent.

Deemed
service

(2) Service may be made on the Superintendent under subsection (1) by first class registered mail addressed to the Superintendent at the Superintendent's office, or by personal service on the Superintendent.

Method of
service

(3) Where a document is served on the Superintendent under subsection (1), the Superintendent shall forthwith mail the document to the insurer or agent at the address for the insurer or agent contained in the records of the Superintendent.

Superin-
tendent to
forward
document

11. Section 18 of the said Act is repealed and the following substituted therefor:

18. The Commission may publish any information that the Commissioner, the Superintendent or the Director considers to be in the public interest.

Publication
by
Commission

12.—(1) Subsections 21 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:

Necessity for
licence

(1) Every insurer undertaking insurance in Ontario or carrying on business in Ontario shall obtain from the Commissioner and hold a licence under this Act.

Prohibition
re: licence

(2) No person shall carry on business as an insurer or engage in an act constituting the business of insurance in Ontario without a licence under this Act.

Idem

(2a) No insurer shall carry on business in Ontario as an insurer of a class of insurance that is not authorized by its licence under this Act.

Prohibition
against acting
on behalf of
unlicensed
insurer

(3) No person in Ontario shall do or cause to be done any act or thing mentioned in subsection 20 (3) on behalf of or as agent of an insurer that is not licensed under this Act.

(2) Subsection 21 (5) of the said Act is repealed and the following substituted therefor:

Unauthorized
insurance

(5) No insurer that is incorporated in Ontario and licensed under this Act shall carry on or solicit business as an insurer in another jurisdiction unless it is authorized to do so under the laws of that jurisdiction.

13. Subsection 23 (1) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

14. Subsection 24 (4) of the said Act is repealed and the following substituted therefor:

Conditions

(4) A licence may be issued subject to such limitations and conditions as may be prescribed by regulation.

15. Paragraph 1 of subsection 25 (1) of the said Act is amended by striking out “benefits set forth in Schedule C” in the last line and inserting in lieu thereof “no-fault benefits required by subsection 232 (1)”.

16.—(1) Subsection 28 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out “Minister” in the seventh line and inserting in lieu thereof “Commissioner”.

(2) Subsection 28 (1a) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(3) Subsection 28 (1b) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

17. Subsection 32 (3) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

18. Subsection 33 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

19.—(1) Subsection 35 (1) of the said Act is amended by striking out “Minister” in the third line and inserting in lieu thereof “Commissioner”.

(2) Subsection 35 (3) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

(3) Subsection 35 (4) of the said Act is amended by striking out “Minister” in the first line and in the tenth line and inserting in lieu thereof in each instance “Commissioner”.

20. Subsection 36 (1) of the said Act is amended by striking out “Minister” in the sixth line and inserting in lieu thereof “Commissioner”.

21. Section 37 of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

22.—(1) Subsection 38 (1) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 38 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

(3) Subsection 38 (3) of the said Act is amended by striking out “Minister” in the third line and inserting in lieu thereof “Commissioner”.

(4) Subsection 38 (4) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

23. Subsection 39 (1) of the said Act is amended by striking out “Minister” in the tenth line and in the eleventh line and inserting in lieu thereof in each instance “Commissioner”.

24.—(1) Subsection 40 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 6, is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 40 (2) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 6, is further amended by striking out “Minister” in the first line and in the sixth line and inserting in lieu thereof in each instance “Commissioner”.

(3) Subsection 40 (3) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 6, is further amended by striking out “Minister” in the third and fourth lines and in the fourth line and inserting in lieu thereof in each instance “Commissioner”.

(4) Subsection 40 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 6, is amended by striking out “Minister” in the first line and in the second line and inserting in lieu thereof in each instance “Commissioner”.

25.—(1) Subsection 41 (2) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

(2) Subsection 41 (3) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(3) Subsection 41 (4) of the said Act is amended by striking out “Minister” in the first line and in the sixth line and inserting in lieu thereof in each instance “Commissioner”.

(4) Subsection 41 (5) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

26.—(1) Subsection 42 (3) of the said Act is amended by striking out “Minister” in the first line, in the fourth line and in the eighth line and inserting in lieu thereof in each instance “Commissioner”.

(2) Subsection 42 (4) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

(3) Subsection 42 (6) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

27. Section 43 of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

28. Section 44 of the said Act is amended by striking out “Minister” in the second line and in the third line and inserting in lieu thereof in each instance “Commissioner”.

29. Section 79 of the said Act is amended by striking out “Superintendent” in the fourth line and inserting in lieu thereof “Commissioner”.

30.—(1) Subsection 80 (1) of the said Act is repealed and the following substituted therefor:

(1) When required by the Commissioner, licensed insurers shall prepare and file with the Commission or with an agency designated by the Commissioner a return respecting the experience of the insurer's business in a form approved by the Commissioner containing such information as the Commissioner may require.

Returns

(2) Subsections 80 (3), (4) and (5) of the said Act are repealed and the following substituted therefor:

(3) If it appears to the Commissioner that the insurer's records of premium income and claims paid are not kept in such a manner as to show correctly the experience of the insurer for the purposes of the statistical return, the Commissioner may nominate an accountant to proceed under his or her direction to audit the books and records of the insurer and to give such instructions as will enable the officers of the insurer to keep the records correctly after the audit.

Audit and
direction

(4) The insurer shall pay the accountant for an audit under subsection (3) forthwith upon receiving a certificate of the Commission stating the amount payable.

Expenses of
audit

(5) Any amount payable to an accountant under subsection (3) that is not paid within thirty days from the date on which the insurer receives the Commission's certificate becomes a debt owing to the Crown.

Debt to the
Crown

31.—(1) Subsection 81 (1) of the said Act is repealed and the following substituted therefor: .

Annual and
interim
statements

(1) Subject to sections 323 and 327, every licensed insurer shall,

- (a) prepare annually and deliver to the Superintendent, on or before the prescribed date for the prescribed category of insurer, a statement of the condition of affairs of the insurer for the year that ended on the 31st day of December next preceding the delivery of the statement; and
- (b) prepare and deliver to the Superintendent when required by the Superintendent, for the prescribed category of insurer, an interim statement for the period specified by the Superintendent containing such information as the Superintendent considers necessary to assess the insurer's condition of affairs.

Contents of
annual
statement

(1a) A statement of the condition of affairs of an insurer under clause (1) (a) shall be in a form approved by the Superintendent, and shall set out,

- (a) the assets, liabilities, revenues and expenses of the insurer for the year;
- (b) particulars of the business done by the insurer in Ontario during the year; and
- (c) such other information as the Superintendent considers necessary to assess an insurer's condition of affairs.

Auditor's
report

(1b) A statement of the condition of affairs of an insurer under clause (1) (a) shall be accompanied by a report of an auditor prepared in the manner required by the Superintendent.

(2) Subsection 81 (2) of the said Act is amended by striking out "subsection (1)" in the fourth line and inserting in lieu thereof "clause (1) (a)".

(3) Subsections 81 (4), (5), (6), (7), (8) and (9) of the said Act are repealed and the following substituted therefor:

Indirect
collection of
personal
information

(4) The Superintendent is authorized to obtain from insurers personal information about identifiable individuals where the collection of the information is required to monitor the condition of affairs of the insurer and the information is collected on a statement made under subsection (1).

32. The said Act is further amended by adding thereto the following sections:

81a. Notice of the requirements for returns under section 80 or 81 is sufficient if it is sent by first class ordinary mail addressed to the insurer at the insurer's address for service of notice or process as identified in the records of the Superintendent. Notice of returns

81b. The financial statements required under this Act shall be prepared in accordance with this Act and the regulations. Preparation of financial statements

33. Subsection 87 (7) of the said Act is amended by striking out "Minister" in the twentieth line and in the twenty-first line and inserting in lieu thereof in each instance "Commissioner".

34. Section 93 of the said Act is amended by striking out "Superintendent" in the second line and inserting in lieu thereof "Commission".

35. Subsection 94 (2) of the said Act is amended by striking out "Minister" in the first line and in the fifth line and inserting in lieu thereof in each instance "Commissioner".

36. Section 97 of the said Act and the heading "Penalties" preceding section 97 are repealed.

37.—(1) Clause 98 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) prescribing fees in relation to matters under this Act, including fees for licences and their renewal, for the filing of documents and, for any services provided by or through the Ministry of Financial Institutions or the Commission.

(2) Clause 98 (1) (b) of the said Act is repealed and the following substituted therefor:

- (b) establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits;
- (ba) requiring insurers to offer optional benefits in excess of the benefits that must be provided under clause (b) and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

- (bb) prescribing categories of insurers for the purpose of subsection 80 (1), requiring insurers to file a return under that subsection by category and prescribing the information that insurers may solicit from insured persons for purposes of such returns;
- (bc) prescribing categories of insurers for the purpose of subsection 81 (1);
- (bd) prescribing dates for the purpose of clause 81 (1) (a);
- (be) governing the preparation of financial statements required under this Act or the regulations;
- (bf) prescribing the information to be given to applicants or to insured persons under subsection 203b (1) and the circumstances in which it is to be given;
- (bg) establishing requirements that must be met before an insurer declines to issue, terminates or refuses to renew a contract of automobile insurance;
- (bh) providing for the payment of premiums for automobile insurance in such instalments as may be prescribed and prescribing maximum rates of interest in relation to instalment payments;
- (bi) prescribing rules for determining the degree of fault in various situations for loss or damage arising directly or indirectly from the use or operation of an automobile;
- (bj) providing for and governing indemnification and subrogation where section 230a or subsection 231 (5b) applies;
- (bk) increasing the amount of damages required before a notice must be given under section 230b;
- (bl) prescribing activities that constitute unfair or deceptive acts or practices under subclause 393 (b) (xii), and prescribing requirements to be met by insurers that, if not complied with, constitute unfair or deceptive acts or practices;
- (bm) prescribing classes of persons and automobiles for the purposes of subsection 239b (1);

- (bn) prescribing rules of procedure and setting time-limits in respect of mediation, arbitration and appeal proceedings under sections 242b to 242e;
- (bo) prescribing expenses that may be awarded to insured persons under subsection 242d (11) and setting maximum amounts that may be awarded for such expenses;
- (bp) permitting the Director to vary or revoke orders and prescribing rules of procedure and setting conditions and setting time-limits in respect thereof and permitting the Director to proceed by way of a hearing or by way of written submissions.

(3) Subsection 98 (1) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 8 and 1987, chapter 8, section 3, is further amended by adding thereto the following clauses:

- (fa) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance in respect of which sections 369 to 372c apply;
- (fb) prescribing classes of risk exposure to be used by insurers in determining the rates for each coverage and category of automobile insurance;
- (fc) prescribing classes of risk exposure which insurers are prohibited from using in determining the rates for each coverage and category of automobile insurance;
- (fd) prescribing, for the purpose of section 6h, the method of determining the share of an assessment that is payable by an insurer.

38. Subsection 143 (3) of the said Act is amended by striking out “Minister” in the fourth line and inserting in lieu thereof “Commissioner”.

39. Section 201 of the said Act is repealed and the following substituted therefor:

201.—(1) In this Part,

Definitions

“automobile”, when used in respect of a contract evidenced by a motor vehicle liability policy, includes a motor vehicle required under any Act to be insured under such a policy;

“contract” means a contract of automobile insurance;

“excluded driver” means a person named as an excluded driver in an endorsement under section 217a;

“fault determination rules” means the rules prescribed under clause 98 (1) (bi);

“insured” means a person insured by a contract whether named or not and includes every person who is entitled to no-fault benefits under the contract whether or not described therein as an insured person;

“no-fault benefits” means the benefits set out in the regulations made under clauses 98 (1) (b) and (ba);

“*No-Fault Benefits Schedule*” means the regulations made under clauses 98 (1) (b) and (ba);

“occupant”, in respect of an automobile, means,

- (a) the driver,
- (b) a passenger, whether being carried in or on the automobile,
- (c) a person getting into or on or getting out of or off the automobile;

“spouse” means either of a man and a woman who,

- (a) are married to each other,
- (b) have together in good faith entered into a marriage, or
- (c) are not married to each other and have cohabited continuously for a period of not less than three years, or have cohabited in a relationship of some permanence if they are the natural or adoptive parents of a child.

Transition

(2) A reference to Schedule C in any other Act or in any regulation, contract or other instrument shall be deemed to be a reference to the *No-Fault Benefits Schedule* and a reference to benefits under Schedule C shall be deemed to be a reference to no-fault benefits.

Idem

(3) Every contract to which subsection 232 (1) applies shall be deemed to have been amended on the day this subsection

comes into force to include no-fault benefits in accordance with the *No-Fault Benefits Schedule*.

(4) The benefits of a person who, before the coming into force of this subsection, was entitled to benefits under Schedule C shall be determined in accordance with this Act as it read immediately before the repeal of Schedule C. Idem

(5) For the purposes of subsections (2) and (4), “Schedule C” means Schedule C to this Act as this Act read before the coming into force of this subsection. Idem

40. The said Act is further amended by adding thereto the following section:

201a. Except as provided in the *No-Fault Benefits Schedule*, the insured under a contract shall be deemed not to include any person who sustains loss or damage while any automobile insured under the contract is being used or operated by an excluded driver. Exception re: insured

41.—(1) Subsections 203 (1) and (2) of the said Act are repealed and the following substituted therefor:

(1) No insurer shall use a form of policy, endorsement or renewal, a claims form or a continuation certificate in respect of automobile insurance other than a form approved by the Commissioner. Approval of forms

(2) Section 203 of the said Act is amended by striking out “Superintendent” wherever it occurs and inserting in lieu thereof in each instance “Commissioner”.

42. The said Act is further amended by adding thereto the following sections:

203a. Where so required by the regulations, no insurer shall use a form of application other than a prescribed form. Application form

OTHER INFORMATION

203b.—(1) An insurer shall supply at such times as may be prescribed such information as may be prescribed to applicants for automobile insurance and to named insureds under contracts. Information for applicants, etc.

(2) Information supplied under subsection (1) by an insurer to an applicant for automobile insurance shall be deemed to be a part of the application. Information deemed to be part of application

Information
from brokers

203c. A broker shall provide, on the request of an applicant for insurance, the names of all insurers with whom the broker has an agency contract relating to automobile insurance and all information obtained by the broker relating to quotations on automobile insurance for the applicant.

43.—(1) Subsection 205 (5) of the said Act is amended by striking out “Superintendent” in the third line and inserting in lieu thereof “Commissioner”.

(2) Subsection 205 (7) of the said Act is amended by striking out “Superintendent” in the fourth and fifth lines and inserting in lieu thereof “Commissioner”.

44. Section 206 of the said Act is amended by adding thereto the following subsection:

No-fault
benefits
protected

(1a) Subsection (1) does not invalidate such no-fault benefits as are set out in the *No-Fault Benefits Schedule*.

45.—(1) Subsection 207 (1) of the said Act is amended by striking out “subsection 203 (2), section 208 and section 229” in the first and second lines and inserting in lieu thereof “sections 208 and 229”.

(2) The statutory conditions set out in section 207 of the said Act are amended by adding thereto the following:

**No-Fault
Benefits
Protected**

1a. Despite a failure to comply with statutory condition 1 (1), a person is entitled to such no-fault benefits as are set out in the *No-Fault Benefits Schedule*.

**Refund of
Premium
Overpayment**

1b.—(1) Where the insured has been incorrectly classified with respect to a risk exposure under this contract under the risk classification scheme used by the insurer or that the insurer is required by law to use, the insurer shall make the necessary correction, and shall refund to the insured the amount of any premium overpayment together with interest thereon for the period that the incorrect classification was in effect at the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the incorrect classification was first made rounded to the next highest whole number if the bank rate includes a fraction.

Definition

(2) In this statutory condition, “bank rate” means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule A to the *Bank Act* (Canada).

**Monthly
Payments**

1c. Unless otherwise provided by the regulations under the *Insurance Act*, the insured may pay the premium, without penalty, in equal monthly payments totalling the amount of the premium. The insurer may charge interest not exceeding the rate set out in the regulations.

(3) Statutory condition 6 (3) set out in the said section 207 is amended by striking out “one year” in the fifth line and inserting in lieu thereof “two years”.

46. Subsection 208 (1) of the said Act is amended by striking out “232 or 233” in the last line and inserting in lieu thereof “or 232”.

47. The said Act is further amended by adding thereto the following sections:

208a.—(1) If an insurer does not intend to renew a contract or if an insurer proposes to renew a contract on varied terms, the insurer shall, Notice of expiry or variation

- (a) give the named insured not less than thirty days notice in writing of the insurer’s intention or proposal; or
- (b) give the broker, if any, through whom the contract was placed forty-five days notice in writing of the insurer’s intention or proposal.

(2) Subject to subsection (3), a broker to whom an insurer has given notice under clause (1) (b) shall give the named insured under the contract not less than thirty days notice in writing of the insurer’s intention or proposal. Idem

(3) Where, before a broker is required to have given notice to a named insured under subsection (2), the broker places with another insurer a replacement contract containing substantially similar terms as the expiring contract, the broker is exempted from giving notice under subsection (2). Exception

(4) A contract of insurance is in force until there is compliance with subsection (1). Effect of failure to comply

208b.—(1) If so required by the regulations, an insurer shall not decline to issue or terminate or refuse to renew a contract unless the insurer has complied with the regulations. Procedures on termination, etc.

(2) The Commissioner may require insurers, agents and brokers to provide such information, material and evidence as the Commissioner considers necessary to determine compliance with subsection (1). Information

(3) An insurer may apply to the Commissioner for an exemption from subsection (1). Exemption

Idem

(4) An application for an exemption from compliance with subsection (1) shall be in a form approved by the Commissioner and shall be filed together with such information, materials and evidence as the Commissioner considers necessary.

Idem

(5) The Commissioner may exempt an insurer in whole or in part from compliance with subsection (1) if, in the opinion of the Commissioner, compliance with the regulations would impair the solvency of the insurer or would cause the insurer to be in contravention of this Act or the regulations.

Non-application

(6) Subsection (1) does not apply in respect of a contract if any payment in respect of premiums payable under the contract or under any ancillary agreement is overdue or if,

- (a) the insured has given false particulars of the described automobile to the prejudice of the insurer;
- (b) the insured has knowingly misrepresented or failed to disclose in an application for insurance any fact required to be stated therein.

48.—(1) Subsection 209 (1) of the said Act is repealed and the following substituted therefor:

Coverage of owner's policy, specific automobile

(1) Subject to section 209a, every contract evidenced by an owner's policy insures the person named therein and every other person who with the named person's consent drives, or is an occupant of, an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

- (a) arising from the ownership or directly or indirectly from the use or operation of any such automobile; and
- (b) resulting from bodily injury to or the death of any person and damage to property.

Innocent persons

(1a) A person who is unaware that the driver does not have the named person's consent to drive the automobile and who has no reason to suspect a lack of consent is not precluded from any recovery of no-fault benefits to which, but for the lack of consent, the person would be entitled.

(2) Paragraph 1 of subsection 209 (3) of the said Act is repealed and the following substituted therefor:

1. The spouse of the deceased insured.

49. The said Act is further amended by adding thereto the following section:

209a. If a contract evidenced by a motor vehicle liability policy names an excluded driver, the insurer is not liable to any person under the contract or under this Act or the regulations for any loss or damage that occurs while the excluded driver is using or operating an automobile insured under the contract, except as provided in the *No-Fault Benefits Schedule*.

Insurer not
liable re:
excluded
driver

50. Clause 210 (a) of the said Act is amended by inserting after “arising” in the first line “directly or indirectly”.

51. Section 214 of the said Act is amended by inserting before “use” in the fourth line “or directly or indirectly from the”.

52. The said Act is further amended by adding thereto the following section:

217a. A named insured may stipulate by endorsement to a contract evidenced by a motor vehicle liability policy that any person named in the endorsement is an excluded driver under the contract.

Excluded
driver
endorsement

53. Subsection 218 (1) of the said Act is amended by inserting after “that” in the third line “except as provided in the *No-Fault Benefits Schedule*”.

54. Subsection 220 (1) of the said Act is amended by inserting after “ownership” in the third line “or directly or indirectly out of the”.

55. The said Act is further amended by adding thereto the following sections:

DIRECT COMPENSATION—PROPERTY DAMAGE

230a.—(1) This section applies if an automobile or its contents, or both, suffers damage arising directly or indirectly from the use or operation in Ontario of any other automobile and both are insured under contracts evidenced by motor vehicle liability policies issued by insurers licensed to undertake insurance in Ontario.

Application

Damage
recovery
from
insured's
insurer

(2) If this section applies, an insured is entitled to recover for the damages to the insured's automobile and its contents and for loss of use from the insured's insurer under the coverage described in subsection 209 (1) as though the insured were a third party.

Idem

(3) Recovery under subsection (2) shall be based on the degree of fault of the insurer's insured as determined under the fault determination rules.

Dispute
resolution

(4) An insured may bring an action against the insurer if the insured is not satisfied that the degree of fault established under the fault determination rules accurately reflects the actual degree of fault or the insured is not satisfied with a proposed settlement and the matters in issue shall be determined in accordance with the ordinary rules of law.

Restrictions
on other
recovery

(5) If this section applies,

- (a) an insured has no right of action against any person involved in the incident other than the insured's insurer for damages to the insured's automobile or its contents;
- (b) an insurer, except as permitted by the regulations, has no right of indemnification from or subrogation against any person for payments made to its insured under this section.

Other
coverages not
affected

(6) This section does not affect an insured's right to recover in respect of any physical damage coverage in respect of the insured automobile.

Non-
application

(7) This section does not apply to damages to those contents of an automobile that are being carried for reward.

Idem

(8) This section does not apply if the damage occurred before the coming into force of this section.

NOTICE OF DAMAGE

Notice to
insurer

230b.—(1) An insured under a contract shall give to the insured's insurer written notice, with all available particulars, of any incident involving the insured automobile in which property damage in excess of \$700 occurs directly or indirectly from the use or operation of an automobile.

Idem

(2) Subject to subsection (3), the notice required by subsection (1) shall be given to the insurer within seven days of the incident.

(3) If the insured is unable because of incapacity to comply with subsection (1) within seven days of the incident, the insured shall comply as soon as possible thereafter. Idem

(4) Compliance with this section shall be deemed to be compliance with statutory conditions 3 (1) (a) and 4 (1) (a) set out in section 207. Idem

56.—(1) Clause 231 (2) (b) of the said Act is amended,

- (a) by striking out “if residing in the same dwelling premises as the insured” in the first and second lines of sub-subclause (B); and**
- (b) by striking out “if residing in the same dwelling premises as such person” in the fifth, sixth and seventh lines of sub-subclause (C).**

(2) Section 231 of the said Act is amended by adding thereto the following subsection:

(2a) Notwithstanding clause 231 (2) (b), a person who sustains loss or damage while the insured automobile is being used or operated by an excluded driver shall be deemed not to be a person insured under the contract in which the excluded driver is named, except as provided in the *No-Fault Benefits Schedule*. Exclusion from coverage

(3) The said section 231 is further amended by adding thereto the following subsections:

(5a) No person has a right of action against any other person in respect of damage to an uninsured automobile or its contents arising directly or indirectly from the use or operation of an automobile if at the time of the damage the uninsured automobile was required by any Act to be insured under a contract evidenced by a motor vehicle liability policy. Restriction on recovery

(5b) Despite subsection (5), no person, except as permitted by the regulations, has a right of indemnification from or subrogation against the owner or driver of an uninsured automobile in respect of damage to an automobile or its contents arising directly or indirectly from the use or operation of the uninsured automobile. Idem

(4) Subsection 231 (6) of the said Act is repealed and the following substituted therefor:

Release

(6) A release under section 239a does not enure to the benefit of any person against whom the insurer may subrogate under subsection (5).

57. Sections 232, 233 and 234 of the said Act are repealed and the following substituted therefor:

No-fault
principle
established

231a.—(1) In respect of loss or damage arising directly or indirectly from the use or operation, after this section comes into force, of an automobile and despite any other Act, the owner or occupant of an automobile is not liable in an action in Ontario for loss or damage from bodily injury arising from such use or operation in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* involving the automobile unless, as a result of such use or operation, the injured person has died or has sustained,

- (a) permanent serious disfigurement; or
- (b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

Idem

(2) Subsection (1) does not relieve any person from liability other than the owner and occupants of the automobile.

Judicial
determination

(3) In an action for loss or damage from bodily injury arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before or at trial, determine if the injured person has, as a result of the accident, died or has sustained,

- (a) permanent serious disfigurement; or
- (b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

Idem

(4) Even though a defence motion under subsection (3) is denied, the defendant may, at trial, in the absence of the jury, and following the hearing of evidence, raise the defence provided in subsection (1).

Joint tort
feasors

(5) In a proceeding involving a plaintiff who cannot recover against the owner or occupant of any automobile because of the operation of subsection (1), a defendant is not liable to contribute or indemnify in respect of the liability of any person who is excluded from liability because of the operation of subsection (1).

(6) For the purposes of subsection (5), the proportion of liability of all persons involved in the incident from which the proceeding arose shall be determined as though all persons wholly or partly responsible for the loss or damage were parties to the proceeding even though any such person is not actually a party. Idem

231b.—(1) The damages awarded to a person in a proceeding for loss or damage arising directly or indirectly from the use or operation of an automobile shall be reduced by, Collateral source rule not to apply

- (a) all payments that the person has received or that were or are available for no-fault benefits and by the present value of any no-fault benefits to which he or she is entitled;
- (b) all payments that the person has received under any medical, surgical, dental or hospitalization plan or law and by the present value of such payments to which he or she is entitled;
- (c) all payments that the person has received or that were or are available for loss of income under the laws of any jurisdiction or under an income continuation benefit plan and by the present value of any such payments to which he or she is entitled; and
- (d) all payments that the person has received under a sick leave plan arising by reason of the person's occupation or employment.

(2) Benefits received under the *Old Age Security Act* (Canada), including amendments thereto, shall not be applied under subsection (1) to reduce damages. Exception
R.S.C. 1985,
c. O-9

(3) A person who has made a payment or who has a liability to pay a benefit described in clause (1) (b), (c) or (d) is not subrogated to a right of recovery of the insured against another person in respect of that benefit. Limitation on
subrogation

(4) This section applies to causes of action arising after the 23rd day of October, 1989. Application

232.—(1) Every contract evidenced by a motor vehicle liability policy shall provide for the no-fault benefits set out in the *No-Fault Benefits Schedule*, subject to the terms, conditions, provisions, exclusions and limits set out in that Schedule. No-fault
benefits

Liability to
pay

(2) The following rules apply for determining who is liable to pay no-fault benefits:

1. In respect of an occupant of an automobile,
 - i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,
 - ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,
 - iii. if recovery is unavailable under subparagraph ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to no-fault benefits arose,
 - iv. if recovery is unavailable under subparagraph iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.
2. In respect of non-occupants,
 - i. the non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an insured,
 - ii. if recovery is unavailable under subparagraph i, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,
 - iii. if recovery is unavailable under subparagraph ii, or if there is doubt as to which automobile struck the non-occupant, the non-occupant has recourse against the insurer of any automobile involved in the incident from which the entitlement to no-fault benefits arose,
 - iv. if recovery is unavailable under subparagraph iii, the non-occupant has recourse against the Motor Vehicle Accident Claims Fund.

Liability

(3) An insurer against whom a person has recourse for the payment of no-fault benefits is liable to pay the benefits.

(4) If, under subparagraph i or iii of paragraph 1 or subparagraph i or iii of paragraph 2 of subsection (2), a person has recourse against more than one insurer for the payment of no-fault benefits, the person, in his or her absolute discretion, may decide the insurer from which he or she will claim the benefits. Choice of insurer

(5) Despite subsection (4), if a person is a named insured under a contract evidenced by a motor vehicle liability policy or the person is the spouse or a dependant of a named insured, the person shall claim no-fault benefits against the insurer under that policy and, if there is more than one such policy, the person, in his or her discretion, may decide the insurer from which he or she will claim the benefits. Idem

(6) The insurance mentioned in subsection (1) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses. Excess insurance

(7) The insurance mentioned in subsection (1) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses. Idem

(8) Where the *No-Fault Benefits Schedule* provides that the insurer will pay a particular no-fault benefit pending resolution of any dispute between the insurer and an insured, the insurer shall pay the benefit until the dispute is resolved. Payments pending dispute resolution

.

234.—(1) A person who is entitled to no-fault benefits or his or her personal representative is entitled to particulars as to whether the owner or operator of any automobile against whom the person may have a claim has insurance that provides for no-fault benefits and the name of the insurer, if any. Particulars of insurance

(2) The person or his or her personal representative may demand the particulars described in subsection (1) by registered mail from the owner or operator of the automobile or the insurer, if any, of either of them. Demand for particulars

(3) Every owner, operator and insurer shall comply with a demand under subsection (2) within ten days of receiving the demand. Reply

58. Section 235 of the said Act is amended by striking out “232 or 233” in the second line and inserting in lieu thereof “or 232”.

59. Section 236 of the said Act is repealed.

60. Subsection 237 (1) of the said Act is amended by striking out “232 or 233” in the second line and inserting in lieu thereof “or 232”.

61. Section 238 of the said Act is repealed and the following substituted therefor:

Limitation of
action

238.—(1) Every proceeding against any insurer under a contract in respect of insurance provided under section 231 must be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than two years after the happening of the accident.

Idem

(2) Every proceeding against any insurer under a contract in respect of insurance provided under section 232 must be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than the period described in subsection 242c (4).

62. Subsection 239 (2) of the said Act is repealed.

63. The said Act is further amended by adding thereto the following sections:

Release

239a. Payments made or available to a person under the *No-Fault Benefits Schedule* constitute, to the extent of such payments, a release by the person or the person's personal representative or any one claiming through or under the person by virtue of Part V of the *Family Law Act, 1986* of any claim under subsection 231 (1) or 232 (1).

1986, c. 4

Indemnifi-
cation in
certain cases

239b.—(1) The insurer responsible under subsection 232 (2) for the payment of no-fault benefits to such classes of persons as may be named in the regulations is entitled to indemnification in relation to such benefits paid by it from the insurers of such class or classes of automobiles as may be named in the regulations involved in the incident from which the responsibility to pay the no-fault benefits arose.

Idem

(2) Indemnification under subsection (1) shall be made according to the respective degree of fault of each insurer's insured as determined under the fault determination rules.

Deductible

(3) No indemnity is available under subsection (2) in respect of the first \$2,000 of no-fault benefits paid in respect of a person described in that subsection.

64.—(1) Subsection 241 (1) of the said Act is amended by inserting after “ownership” in the fourth line “or directly or indirectly with the”.

(2) Subsection 241 (2) of the said Act is amended by striking out “232 and 233” in the first line and inserting in lieu thereof “and 232”.

65. The said Act is further amended by adding thereto the following sections:

DISPUTE RESOLUTION—NO-FAULT BENEFITS

242a.—(1) Disputes in respect of any insured person’s entitlement to no-fault benefits or in respect of the amount of no-fault benefits to which an insured person is entitled shall be resolved in accordance with sections 242b to 242e and the *No-Fault Benefits Schedule*. Dispute resolution, procedure to be followed

(2) Any restriction on a party’s right to mediate, litigate, arbitrate or appeal as provided in sections 242b to 242e is void except where the restriction forms part of a settlement. No opting out

(3) For the purposes of this section and sections 242b to 242e, “insured person” includes a person who is claiming funeral expenses or a death benefit under the *No-Fault Benefits Schedule*. Definition

(4) The Director and every arbitrator shall determine issues before them by order and may make an order subject to such conditions as are set out in the order. Orders

(5) If an insurer or an insured is represented in any mediation, arbitration or appeal proceeding under sections 242b to 242e, the mediator, arbitrator or Director, as the case may be, may adjourn the proceeding, with or without conditions, if the representative is not authorized to bind the party he or she represents. Power to bind parties

242b.—(1) Either the insured person or the insurer may refer to a mediator any matter in dispute in respect of the insured person’s entitlement to no-fault benefits or in respect of the amount of no-fault benefits to which the insured person is entitled. Mediation

(2) The party seeking mediation shall file an application for the appointment of a mediator with the Commission. Starting the process

(3) The Director shall ensure that a mediator is appointed promptly. Mediator’s appointment

Mediation	(4) The mediator shall enquire into the issues in dispute and attempt to effect a settlement of as many of the issues as possible within the time prescribed in the regulations for the settlement of the type of dispute in question.
Extension of time	(5) The parties may by agreement extend the time for the completion of the mediation process, even if the time for completion has expired.
Notice of failure	(6) If at any time before a settlement is effected the mediator is of the opinion that mediation will fail, he or she shall forthwith notify the parties.
Idem	(7) Mediation has failed when the mediator has given notice to the parties that in his or her opinion mediation will fail, or when the prescribed or agreed time for mediation has expired and no settlement has been reached.
Idem	(8) The mediator shall set out the last offer of the parties in the notice of failure.
Litigation or arbitration	242c. —(1) If mediation fails, the insured person may bring a proceeding in a court of competent jurisdiction or may refer the matter to an arbitrator.
Payment pending dispute resolution	(2) Subject to subsection (3), if mediation fails, the insurer shall pay no-fault benefits in accordance with the last offer of settlement that it had made before the failure until otherwise agreed by the parties or until otherwise ordered by a court, an arbitrator or the Director.
Idem	(3) If a dispute involves a no-fault benefit that the insurer is required to pay under subsection 232 (8) and the insured has not commenced a proceeding in a court or an arbitration proceeding within forty-five days after the day mediation failed, the insurer shall pay the insured in accordance with the last offer made by the insurer before the failure until otherwise agreed by the parties or until otherwise ordered by a court, an arbitrator or the Director.
Limitation period	(4) A proceeding in a court or an arbitration proceeding in respect of no-fault benefits must be commenced within two years after the insurer's refusal to pay the benefit claimed or within such longer period as may be provided in the <i>No-Fault Benefits Schedule</i> .
Arbitration, starting the process	242d. —(1) An insured person seeking arbitration shall file an application for the appointment of an arbitrator with the Commission.

(2) The Director shall ensure that an arbitrator is appointed promptly.

Arbitrator's appointment

(3) The arbitrator shall determine all issues in dispute and such other issues as the parties may agree.

Settlement of issues

(4) The arbitration shall be conducted in accordance with the procedures and within the time-limits set out in the regulations.

Procedures

(5) The Director, on the recommendation of an arbitrator, shall refer to the chair of the medical and rehabilitation advisory panel any question related to the medical condition or treatment of the insured person or related to the insured person's rehabilitation.

Questions

(6) The chair of the medical and rehabilitation advisory panel shall refer the question to one or more persons (referred to in this section as advisors) who he or she considers qualified to conduct a medical or rehabilitation assessment, as the case may be.

Advisors

(7) Advisors may advise and report to the arbitrator on any question before them on the basis of the evidence before the arbitrator and they may require the insured person to submit, at the expense of the insurer, to such medical or rehabilitation assessments as they may require.

Idem

(8) Reports prepared by advisors shall be delivered to the arbitrator and the parties.

Transmittal of reports

(9) Except with the permission of the insured person, no person shall use or provide copies of, or release information from, any report prepared by an advisor other than for the purpose of determining the claim in respect of which the arbitration was undertaken.

Use of reports

(10) If the arbitrator finds that an insurer has unreasonably withheld or delayed payments, the arbitrator, in addition to awarding the benefits and interest to which an insured person is entitled under the *No-Fault Benefits Schedule*, shall award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*.

Special award

(11) The arbitrator may award to the insured person such expenses incurred in respect of an arbitration proceeding as

Expenses

may be prescribed in the regulations to the maximum set out in the regulations.

Bias (12) A party may apply to the Director for the appointment of a new arbitrator if the party believes that the arbitrator is biased and the Director shall determine the issue.

Copies of decision (13) The arbitrator, forthwith upon making a decision in an arbitration, shall deliver a copy of his or her order together with the reasons therefor to the insured person, the insurer and the Director.

Enforcement (14) At the request of the insured person, the Director shall file a copy of the arbitrator's order in the Supreme Court and the order shall be entered and be enforceable in the same way as a judgment or order of the court.

Idem (15) The method of enforcement set out in subsection (14) is in addition to any other method of enforcement set out in this Act.

Non-application of R.S.O. 1980, c. 25 (16) The *Arbitrations Act* does not apply to arbitrations under this section.

Appeal **242e.**—(1) A party to an arbitration may appeal the order of the arbitrator to the Director.

Request for appeal (2) A request for an appeal shall be in writing and shall be delivered to the Commission within thirty days after the date of the arbitrator's order.

Starting the process (3) The appellant shall file a notice of appeal with the Director and serve a copy of the notice on the respondent.

Nature of hearing (4) The Director may determine the appeal on the record or by way of a rehearing of all the issues before the arbitrator or partly on the record and partly by way of rehearing as the Director in his or her opinion may decide.

Power of the Director (5) Upon hearing an appeal, the Director may confirm, vary or rescind the order appealed from or substitute his or her order for that of the arbitrator.

Order not stayed (6) An appeal does not stay the order of the arbitrator unless the Director decides otherwise.

Medical reports, special awards, expenses (7) Subsections 242d (5) to (11) apply with necessary modifications to appeals before the Director.

(8) The Director may permit persons who are not parties to the appeal to make submissions on issues of law arising in an appeal. Interventions

(9) At the request of the insured person, the Director shall file a copy of his or her order in an appeal under this section in the Supreme Court and the order shall be entered and be enforceable in the same way as a judgment or order of the court. Enforcement

(10) The method of enforcement set out in subsection (9) is in addition to any other method of enforcement set out in this Act. Idem

242f.—(1) The Director may state a case in writing for the opinion of the Divisional Court upon any question that, in his or her opinion, is a question of law. Stated case

(2) The Divisional Court shall hear and determine the stated case. Idem

242g. The Director shall review arbitration orders and may recommend to the Superintendent that the Superintendent investigate the business practices of an insurer if the Director is of the opinion that any arbitration or appeal from an arbitration reveals unfair or deceptive business practices. Finding of possible unfair or deceptive business practice

242h. If permitted by the regulations and subject thereto, the Director may vary or revoke an order made by him or her if he or she considers it advisable to do so. Variation of decision

66. Subsection 299 (4) of the said Act is repealed.

67. Subsection 303 (4) of the said Act is repealed and the following substituted therefor:

(4) This section is subject to any rules to the contrary certified by and filed with the Superintendent under this Part. Exception

68. Subsection 308 (1) of the said Act is amended by striking out “prescribe” in the last line and inserting in lieu thereof “require”.

69.—(1) Subsection 309 (1) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 309 (2) of the said Act is repealed and the following substituted therefor:

Request by
Commis-
sioner

(2) If, after considering the report, the Commissioner agrees with the Superintendent, the Commissioner shall require the society to make, within the specified time but not exceeding four years, such increase in its rates of contribution or such reduction in the benefits payable under its contracts of insurance or otherwise as will enable the society to provide for the payment of its contracts of insurance at maturity.

(3) Subsection 309 (4) of the said Act is amended by striking out “Minister” in the fourth line and inserting in lieu thereof “Commissioner”.

70. Section 310 of the said Act is amended by striking out “Minister” in the seventh line and inserting in lieu thereof “Commissioner”.

71. Subsection 311 (1) of the said Act is amended by striking out “Minister” in the second line and in the fourth line and inserting in lieu thereof in each instance “Commissioner”.

72. Subsection 322 (1) of the said Act is amended by striking out “Minister” in the tenth line and inserting in lieu thereof “Commissioner”.

73. Subsection 325 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

74. Sections 369 to 372 of the said Act are repealed and the following substituted therefor:

Application
re classes,
rates

369.—(1) Every insurer shall apply to the Commissioner for approval of,

- (a) the classes of risk exposure it intends to use in determining the rates for each coverage and category of automobile insurance; and
- (b) the rates it intends to use for each coverage and category of automobile insurance.

Exception

(2) An insurer is not required to apply for approval of such classes of risk exposure as insurers may be required by regulation to use.

Material to
be furnished

(3) An application for approval of classes of risk exposure or rates shall be in a form approved by the Commissioner and shall be filed together with such information, material and evidence as the Commissioner may specify.

- (4) The Commissioner may require an applicant to provide such information, material and evidence as the Commissioner considers necessary in addition to the information, material and evidence required to be provided in or with the application. Additional information
- (5) An application shall be deemed to have been approved by the Commissioner sixty days after it is filed unless the Commissioner within that sixty-day period advises the applicant orally or otherwise that he or she has not approved the application. Approval
- (6) The Commissioner may extend the period for approval for a period not exceeding sixty days. Extension of time
- (7) If the Commissioner notifies an applicant orally that he or she has not approved an application, the Commissioner shall promptly mail a written notice to the applicant confirming that fact. Notice
- (8) If the Commissioner notifies an applicant that he or she has not approved an application, the Commissioner shall hold a hearing. Hearing
- (9) The Commissioner shall not approve an application if the Commissioner considers that it is in the public interest to hold a hearing on the application. Hearing, public interest
- (10) The Commissioner shall refuse to approve an application if the Commissioner considers that the proposed classes of risk exposure or rates are not just and reasonable in the circumstances. Refusal to approve
- (11) The Commissioner shall refuse to approve an application respecting proposed classes of risk exposure that the Commissioner considers, Idem
- (a) are not reasonably predictive of risk; or
 - (b) do not distinguish fairly between classes of risk exposure.
- (12) The Commissioner shall refuse to approve an application respecting proposed rates that the Commissioner considers would impair the solvency of the applicant or are excessive in relation to the financial circumstances of the insurer. Idem
- (13) In deciding upon an application, the Commissioner may take into account financial and other information and such other matters as may directly or indirectly affect the Relevant information

applicant's proposed rates or the applicant's ability to underwrite insurance for the proposed classes of risk exposure.

Powers of
the Commis-
sioner

(14) Following a hearing, the Commissioner may approve or refuse to approve the application or may vary the classes of risk exposure or the rates, and the approval may be subject to such conditions or restrictions as the Commissioner considers appropriate in the circumstances.

Definition

(15) In this section, "insurer" includes the Facility Association.

Exemptions
from
approval
process

370.—(1) The Commissioner may exempt insurers, other than the Facility Association, from making an application under section 369 in respect of designated categories or coverages of automobile insurance.

Filing

(2) An insurer shall file the classes of risk exposure and rates it intends to use for the exempted categories or coverages of automobile insurance in a form approved by the Commissioner.

Effective
date

(3) An insurer may use the classes of risk exposure or rates filed under this section thirty days after filing them.

Revocation
of exemption

(4) If the Commissioner revokes an exemption, insurers are required to apply within thirty days after the revocation for approval under section 369 of the classes of risk exposure and rates it is using for the categories or coverages of automobile insurance affected by the revocation.

Idem

(5) An insurer may continue to use the classes of risk exposure and rates filed before the Commissioner revoked the exemption until the insurer's application under subsection (4) is determined.

Applications
by affiliates

371.—(1) The Commissioner may require that affiliated insurers who write automobile insurance in Ontario file their applications under section 369 or 370 concurrently.

Idem

(2) The Commissioner may consider the classes of risk exposure and the rates of the affiliates of an insurer when deciding upon the insurer's application.

Interpretation

(3) For the purpose of this section, an insurer is considered to be affiliated with another insurer if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person.

372.—(1) Despite any approval or exemption under section 369 or 370, the Commissioner may, at any time, order a hearing with respect to any classes of risk exposure or rates for any coverage or category of automobile insurance of an insurer if the Commissioner is of the opinion that, Reconsideration

- (a) the classes of risk exposure, rules, procedures, factors or rates are not just and reasonable in the circumstances;
- (b) the classes of risk exposure are not reasonably predictive of risk or do not distinguish fairly between classes of risk exposure; or
- (c) the rates would impair the solvency of the insurer or are excessive in relation to the financial circumstances of the insurer.

(2) Following a hearing, the Commissioner may vary the classes of risk exposure the insurer may use or the rates it may charge. Variation

(3) For the purposes of section 372b, classes and rates varied under subsection (2) shall be deemed to be classes and rates approved by the Commissioner. Deemed approval

372a.—(1) The Minister may issue policy statements on matters related to coverages or categories of automobile insurance, classes of risk exposure and automobile insurance rates. Policy statements

(2) A policy statement takes effect on the day it is published in *The Ontario Gazette*. When effective

(3) The Commissioner shall have regard to the policy statements issued under this section in making decisions under this Part. Effect of statement

372b.—(1) No insurer shall use a class of risk exposure in determining a rate for a coverage or category of automobile insurance that is not approved by the Commissioner or authorized under section 370 or by regulation. Prohibition, classes

(2) No insurer shall use a rate for a coverage or category of automobile insurance that is not approved by the Commissioner or authorized under section 370. Idem, rates

(3) In this section, “insurer” includes the Facility Association. Definition

Coming into
force

(4) This section comes into force on a day to be named by proclamation of the Lieutenant Governor.

75.—(1) Clause 388 (8) (g) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

(2) Subsection 388 (8a) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 8, section 8, is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

76.—(1) Clause 393 (a) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 70, section 32, is repealed and the following substituted therefor:

(a) “person” includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society known as Lloyd’s, fraternal society, mutual benefit society or syndicate.

(2) Clause 393 (b) of the said Act is amended,

(a) by striking out “in the business of insurance” in the first and second lines;

(b) by striking out “or” at the end of subclause (viii); and

(c) by striking out subclause (ix) and inserting in lieu thereof:

(ix) any conduct resulting in unreasonable delay or resistance to the fair adjustment and settlement of claims,

(x) making the issuance or variation of a policy of automobile insurance conditional upon the purchase by the insured of another insurance policy,

(xi) when rating a person or a vehicle as an insurance risk for the purpose of determining the premium payable for a policy of automobile insurance, misclassifying the person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use, or

- (xii) any activity or failure to act that is prescribed as an unfair or deceptive act or practice.

77. Section 394 of the said Act is repealed and the following substituted therefor:

394. No person shall engage in any unfair or deceptive act or practice. Prohibition

78. Sections 396 and 397 of the said Act are repealed and the following substituted therefor:

396.—(1) If, in the opinion of the Superintendent, a person is committing any act or pursuing any course of conduct that is an unfair or deceptive act or practice or might reasonably be expected to result in a state of affairs that would constitute an unfair or deceptive act or practice, the Superintendent may give notice to the person of the Superintendent's intention to order the person, Superintendent's orders

- (a) to cease or refrain from doing any act or pursuing any course of conduct identified by the Superintendent;
- (b) to cease engaging in the business of insurance or any aspect of the business of insurance specified by the Superintendent; or
- (c) to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

(2) A person, by written notice served on the Superintendent within fifteen days after the service of the notice under subsection (1), may require a hearing before the Superintendent. Hearing

(3) Notwithstanding subsection (2), where, in the opinion of the Superintendent, the interests of the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Superintendent, without prior notice, may make an interim order as described in clause (1) (a), (b) or (c) which shall take effect immediately on its making, and which shall become permanent on the fifteenth day after its making unless within that time a hearing before the Superintendent is requested. Interim order

(4) If no hearing is requested within the time set out in subsection (2) or (3), or if a hearing is held and the Superintendent is of the opinion that an order described in clause (1) (a), (b) or (c) should be made, the Superintendent may make a When order may be made

permanent order under any of those clauses which shall take effect immediately on its making or at such later date as may be set out in the order.

Hearing (5) A request for a hearing under subsection (3) shall be in writing and served on the Superintendent.

Extension of order (6) If a hearing is requested under subsection (3), the Superintendent may extend the temporary order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

Modification or revocation (7) The Superintendent may, after giving the person named in the order an opportunity to be heard, modify or, without holding a hearing, revoke an order made under this section.

79. The said Act is further amended by adding thereto the following Part:

PART XX

EXAMINATION AND ENFORCEMENT

Definition **407.** In this Part, “examination” means examination, inquiry, appraisal, audit or inspection under this Act.

Examinations, general **408.**—(1) It is a condition of the licensing of a person that the person facilitate examinations.

Material to be furnished (2) For the purpose of an examination, the insurer, agent or adjuster shall prepare and submit to the person conducting the examination such statements or returns with respect to the insurer’s, agent’s or adjuster’s business, finances or other affairs, in addition to the statements or returns mentioned in this Act, as the Superintendent may require.

Duty of officers, etc. (3) The officers, agents and employees of an insurer, agent or adjuster shall open the books for inspection and shall otherwise facilitate an examination under this Act so far as it is in their power.

Production of books (4) In order to facilitate an examination of the books and records of an insurer, agent or adjuster, the Superintendent or a person designated by the Commissioner may require the insurer, agent or adjuster to produce the books and records at his, her or its principal place of business in Ontario, or at such other convenient place as the Superintendent may direct.

Expense of further examination (5) On the direction of the Superintendent or a person designated by the Commissioner, if an examination of an insurer

is made at an office situate outside Ontario, the insurer shall pay the costs and expenses of the examination.

409.—(1) A person conducting an examination, for the purpose of carrying out that person's duties, Powers of examination, etc.

- (a) may enter any place at any reasonable time;
- (b) may require the production for inspection of documents or things that may be relevant to the carrying out of the duties;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall return them within a reasonable time to the person who produced them; and
- (d) may question a person on matters that are or may be relevant to the carrying out of the examination.

(2) No person may exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section. Entry to dwellings

(3) Where a justice of the peace is satisfied on information upon oath that there are in a place documents or things that there are reasonable grounds to believe will afford evidence relevant to the carrying out of an examination under this Act, the justice of the peace may issue a warrant authorizing the person named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed. Warrant for search

(4) Where a justice of the peace is satisfied on information upon oath that there are reasonable grounds to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a person may carry out an examination, the justice of the peace may issue a warrant authorizing such entry by the person named in the warrant. Warrant for entry

- (5) A warrant issued under subsection (3) or (4), Execution and expiry of warrant
- (a) shall specify the hours and days during which it may be executed; and

- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(6) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede a person carrying out an examination.

Idem

(7) Subsection (6) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (3).

Admissibility
of copies

(8) Copies of, or extracts from, documents and things removed from premises under this Act and certified by the person who made the copies as being true copies of, or extracts from, the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Reporting by
auditor

410.—(1) An auditor shall promptly report to the insurer and to the Superintendent any breach of this Act of which the auditor is aware or is made aware under subsection (2) and, if the insurer does not act to rectify the breach within thirty days, the auditor shall promptly report the failure to rectify to the Superintendent.

Reporting by
others

(2) Any person undertaking professional services for an insurer who, in providing the professional services, becomes aware of a breach of this Act shall promptly report the breach to the insurer and the auditor of the insurer or, if there is no auditor, to the Superintendent.

Solicitor-
client
privilege

(3) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client.

No liability

411. A person who in good faith makes an oral or written statement or disclosure to the Commissioner, the Superintendent, an employee of the Commission or any other person acting under the authority of this Act that is relevant to the duties of the person to whom the statement or disclosure is made shall not be liable in any civil action arising out of the making of the statement or disclosure.

Definition

412.—(1) In this section, "person" includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society known as Lloyd's, fraternal society, mutual benefit society or syndicate.

Offences

(2) Every person is guilty of an offence who,

- (a) directly or indirectly furnishes false, misleading or incomplete information to the Commission whether the information is required under this Act or is volunteered;
- (b) fails to comply with any requirement of, or any order or direction made under, this Act;
- (c) fails to comply with any written undertaking given to the Commissioner or the Superintendent;
- (d) contravenes this Act or the regulations; or
- (e) contravenes any term, condition or restriction imposed by a licence.

(3) On conviction for an offence under this Act, the person convicted is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000. Penalty

(4) Every director, officer and chief agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association who, Derivative

- (a) caused, authorized, permitted or participated in the corporation or unincorporated association committing an offence referred to in subsection (2); or
- (b) failed to take reasonable care to prevent the corporation or unincorporated association from committing an offence referred to in subsection (2),

is guilty of an offence and is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000, whether or not the corporation or unincorporated association has been prosecuted for or convicted of the offence.

(5) Where a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto. Restitution

413.—(1) If it appears to the Superintendent that any person has failed to comply with or is not complying with, Order for compliance

- (a) any order, decision, direction or inquiry made under this Act;

(b) any undertaking given; or

(c) any term, condition or restriction imposed on its licence, where applicable,

the Superintendent may, in addition to any other rights under this Act, apply to a judge of the High Court for an order directing the person to comply with or restraining the person from violating the order, decision, direction, inquiry, undertaking, term, condition or restriction, and the judge may make such order as the judge considers appropriate.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1).

Limitation
period

414. No proceeding for an offence under this Act may be commenced more than two years after the earlier of the date on which the facts upon which the proceedings are based first came to the knowledge of the Commissioner or the Superintendent.

80. Schedule C to the said Act is repealed.

81. The *Automobile Insurance Rates Control Act, 1989*, being chapter 34, is repealed.

82.—(1) Subclause 1 (c) (ii) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

R.S.O. 1980,
c. 218

(ii) provides the no-fault benefits set out in the *No-Fault Benefits Schedule* under the *Insurance Act*.

(2) Section 1 of the said Act is amended by adding thereto the following clause:

R.S.O. 1980,
c. 218

(ca) “Commissioner” means the commissioner of insurance under the *Insurance Act*.

(3) Clause 1 (n) of the said Act is repealed.

(4) Section 1 of the said Act is amended by adding thereto the following subsection:

Exception re:
excluded
driver

(2) Notwithstanding that a motor vehicle is insured under a contract of automobile insurance, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the

Insurance Act with respect to that contract unless the excluded driver is a named insured under another contract of automobile insurance.

(5) The said Act is amended by striking out “Superintendent” wherever it occurs and inserting in lieu thereof in each instance “Commissioner”.

(6) Section 3 of the said Act is amended by adding thereto the following subsection:

(1a) Despite subsection (1), an operator of a motor vehicle who is named as an excluded driver under the contract of automobile insurance under which the vehicle is insured shall have in the vehicle at all times an insurance card evidencing that the operator is a named insured under another contract of automobile insurance, and the operator shall surrender the insurance card for reasonable inspection upon the demand of a police officer.

Excluded driver to carry insurance card

(7) Subsection 3 (2) of the said Act is amended by striking out “subsection (1)” in the first line and inserting in lieu thereof “this section”.

(8) Subsection 10 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 18, section 32, is repealed and the following substituted therefor:

(4) Rates prepared under subsection (3) do not come into effect until approved under section 369 of the *Insurance Act*.

Idem
R.S.O. 1980,
c. 218

83. Section 66 of the *Corporations Tax Act*, being chapter 97 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

(1a) Clause (1) (b) does not apply in respect of a contract of automobile insurance within the meaning of the *Insurance Act* unless the automobile insured by the policy is,

Exception
R.S.O. 1980,
c. 218

- (a) an ambulance or funeral vehicle;
- (b) a bus, limousine or taxi or other vehicle that carries passengers for reward or as part of a transportation service;
- (c) a fire department or police vehicle;
- (d) a driver training vehicle;
- (e) a vehicle rented for a period of less than thirty days;

- (f) a vehicle used primarily to transport things in connection with the insured's business or occupation; or
- (g) a vehicle that weighs more than 4,500 kilograms.

84. Clause 1 (1) (t) of the *Credit Unions and Caisses Populaires Act*, being chapter 102 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (t) "Superintendent" means the Superintendent of Deposit Institutions.

85. Section 36 of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Exception

(4) Despite subsection (1), the Plan is not subrogated to the rights of an insured person in respect of personal injuries arising directly or indirectly from the use or operation of an automobile after this section comes into force in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* under the *Insurance Act*.

R.S.O. 1980,
c. 218

86.—(1) Section 1 of the *Motor Vehicle Accident Claims Act*, being chapter 298 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 12, section 1, is further amended by adding thereto the following subsection:

Exception re:
excluded
driver

(1a) Notwithstanding that a motor vehicle is insured under a motor vehicle liability policy, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the *Insurance Act* with respect to that policy unless the excluded driver is a named insured under another motor vehicle liability policy.

R.S.O. 1980,
c. 218

(2) The said Act is amended by adding thereto the following section:

No-fault
benefits

4b.—(1) Any person who has recourse against the Fund for no-fault benefits under section 232 of the *Insurance Act* may make application, in a form prescribed by the Minister, for payment out of the Fund of the benefits.

Payment out
of Fund
authorized

(2) The Minister may, in respect of an application made under subsection (1), make payment out of the Fund of an

amount that the Minister considers proper in all the circumstances if the applicant signs a release in respect thereof.

87. Section 10 of the *Motorized Snow Vehicles Act*, being chapter 301 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

10. The *Highway Traffic Act*, except Part XI, and the *Motor Vehicle Accident Claims Act*, except section 4b, do not apply to a motorized snow vehicle or to the driving thereof. Application
of
R.S.O. 1980,
c. 198, 298

88. The *Ontario Automobile Insurance Board Act*, 1988, being chapter 18, is repealed.

89.—(1) Section 1 of the *Prepaid Hospital and Medical Services Act*, being chapter 388 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

(aa) “Commissioner” means the commissioner of insurance under the *Insurance Act*. R.S.O. 1980,
c. 218

(2) Section 12 of the said Act is repealed and the following substituted therefor:

12. An association that considers itself aggrieved by a decision of the Superintendent may appeal the decision to the Commissioner in accordance with the procedures set out in the *Insurance Act*. Appeal

R.S.O. 1980,
c. 218

90.—(1) Section 1 of the *Registered Insurance Brokers Act*, being chapter 444 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

(ca) “Commissioner” means the commissioner of insurance under the *Insurance Act*. R.S.O. 1980,
c. 218

(2) Section 9 of the said Act is repealed and the following substituted therefor:

9.—(1) The Ontario Insurance Commission established under the *Insurance Act* shall be deemed to have an interest in the Corporation, as the representative of all persons who may be served by registered insurance brokers. Ontario
Insurance
Commission
R.S.O. 1980,
c. 218

(2) The Corporation shall, within a reasonable time, furnish the Commissioner or the Superintendent, as the case may be, with such information and financial statements with respect to the Corporation as he or she may require. Information

(3) Subsection 10 (1) of the said Act is amended,

(a) by striking out “the Minister and the Superintendent” in the second and third lines and inserting in lieu thereof “and the Minister”; and

(b) by striking out “or Superintendent” in the last line.

Transitional
1988, c. 18

91.—(1) A filing by an insurer under a regulation made under clause 29 (1) (e) of the *Ontario Automobile Insurance Board Act, 1988* respecting classes of risk exposure and rates for automobile insurance shall be deemed to be the insurer’s first application under section 369 of the *Insurance Act* if the regulation so indicates and the Commissioner of Insurance so orders.

R.S.O. 1980,
c. 218

Idem

(2) An application referred to in subsection (1) shall be deemed to have been made on the date that section 369 of the *Insurance Act* comes into force.

Commence-
ment

92. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

93. The short title of this Act is the *Insurance Statute Law Amendment Act, 1989*.

Bill 68

An Act to amend certain Acts respecting Insurance

The Hon. M. Elston
Minister of Financial Institutions



1st Reading October 23rd, 1989
2nd Reading December 5th, 1989
3rd Reading
Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The purposes of the Bill are,

- (a) to establish the Ontario Insurance Commission;
- (b) to provide for a no-fault benefits scheme to replace the current Schedule C;
- (c) as part of the regulation of automobile insurance, to establish a new dispute resolution system for resolving disputes related to no-fault benefits;
- (d) to provide for direct compensation from an insured's own insurer for property damage caused by third persons;
- (e) to provide an incentive for persons to obtain insurance;
- (f) to strengthen the regulatory system governing insurers in Ontario;
- (g) to augment the means of enforcing the *Insurance Act*;
- (h) to increase consumer protection respecting automobile insurance;
- (i) to eliminate the corporations tax payable in respect of insurance for private passenger automobiles;
- (j) to permit the naming of persons as "excluded drivers" under contracts of automobile insurance;
- (k) to improve the collection of statistical data;
- (l) to update several administrative provisions of the *Insurance Act*.

The principal provisions of the Bill are as follows:

SECTIONS 1 to 4, 8, 12, 13, 16 to 29, 33 to 35, 38, 41, 43, 69 to 75, 81, 82 and 88 to 91.

The Ontario Insurance Commission is established as the new regulator of the insurance industry. The Commission will be headed by the Commissioner of Insurance who will have, among his or her powers, the power to approve automobile insurance rates. He or she will also be responsible for appeals from decisions of the Superintendent. The Superintendent of Insurance and the Director of Arbitrations will also be members of the Commission. Complementary amendments are made to other Acts.

SECTIONS 15, 37, 39, 44 to 46, 48 to 51, 54, 56 to 64, 80, 82, 83 and 85 to 87.

Provision is made for a new no-fault scheme to replace the existing Schedule C. Access to traditional tort remedies will be restricted to cases of death and cases of permanent serious disfigurement or impairment. The legal concept known as the "collateral source rule" is eliminated. Complementary amendments are made to other Acts.

SECTIONS 3, 37 and 65. Disputes over entitlement to no-fault benefits will be resolved under a new dispute resolution system. Under this system, disputes will first be referred by either the insurer or the insured person to compulsory mediation. If mediation fails, an insured person will have the option of proceeding by way of arbitration or litigation to resolve the claim.

SECTIONS 1, 3, 5 to 10, 14, 36, 37, 66, 67, 68 and 84. Among the administrative changes made in order to update the *Insurance Act* are the appointment and powers of the Superintendent, the protection of Crown employees from liability in civil proceedings, and record-keeping requirements for the Superintendent. Changes to the regulation-making powers of the Lieutenant Governor in Council are complementary to other amendments to the Act.

SECTIONS 3, 10, 12, 37 and 79. Comprehensive powers to enforce the *Insurance Act* are consolidated in a new Part XX of the Act. An offence is created respecting the obstruction of examinations made under the Act. Increased penalties are provided, and the limitation period for legal proceedings under the Act is extended.

SECTIONS 6, 7 and 10. Among the administrative provisions made in order to streamline enforcement of the *Insurance Act* are authorization to the Commission to issue certificates that may be used in evidence in legal proceedings, and provisions governing service of documents.

SECTIONS 10, 30 to 32, 78 and 79. The regulatory system is strengthened. The Superintendent is empowered to collect information from insurers through annual and interim returns filed by insurers, to make specific inquiries to, and periodically to examine the condition of affairs of, insurers. The powers of persons conducting examinations under the Act are set out. The duty to furnish information is clarified. The Superintendent may issue compliance orders.

SECTIONS 11, 41, 42, 45, 47, 76 and 77. Consumer protection measures respecting automobile insurance are augmented. The Commission is authorized to publish information about insurers that is in the public interest. Insurers are required to supply prescribed information to applicants for insurance and to insured persons. The category of "unfair acts and practices" by insurers is expanded.

SECTION 55. Insureds will collect damages from their own insurers for property damage caused by third persons. They will also be required to provide their insurer with details of any accident which must be reported under the *Highway Traffic Act*. This will improve the collection of statistical data by insurers.

SECTION 56. Under the proposed subsection 231 (5a) of the Act, uninsured motorists will be unable to recover for property damage. This will encourage compliance with the *Compulsory Automobile Insurance Act* and other statutes which require insurance.

SECTION 83. The tax payable under subsection 66 (1) of the *Corporations Tax Act* in respect of insurance for private passenger automobiles is eliminated.

SECTIONS 39, 40, 48, 49, 52, 53, 56, 82 and 86. Provision is made for an endorsement to a contract of automobile insurance naming an "excluded driver". If an excluded driver drives an automobile that is otherwise insured under the contract, the automobile is no longer insured, and persons otherwise insured under the contract are no longer insured, although they are entitled to medical and accident benefits under the *No-Fault Benefits Schedule*. Complementary amendments are made to other Acts.

Bill 68

1989

An Act to amend certain Acts respecting Insurance

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 67, section 1, is further amended by adding thereto the following paragraph:

2a. “accountant” means a person who is licensed under the *Public Accountancy Act*.

R.S.O. 1980,
c. 405

(2) Paragraph 7 of section 1 of the said Act is repealed.

(3) Section 1 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 1, is further amended by renumbering paragraph 13a as paragraph 13d and by adding thereto the following paragraphs:

13a. “class of risk exposure”, in relation to automobile insurance, includes all rules, procedures and factors used to determine the rates for each coverage and category of automobile insurance;

13b. “Commission” means the Ontario Insurance Commission;

13c. “Commissioner” means the commissioner of insurance appointed under section 3;

.

15a. “Director” means the director of arbitrations appointed under section 6;

.

56a. "rate", in relation to automobile insurance, means all amounts payable under contracts of automobile insurance for an identified risk exposure whether expressed in dollar terms or in some other manner and includes commissions, surcharges, fees, discounts, rebates and dividends.

(4) Paragraph 39 of section 1 of the said Act is repealed and the following substituted therefor:

39. "Minister" means the Minister of Financial Institutions.

(5) Paragraph 62 of section 1 of the said Act is repealed and the following substituted therefor:

62. "Superintendent" means the superintendent of insurance appointed under section 4.

2. The heading to Part I of the said Act is repealed and the following substituted therefor:

PART I

ONTARIO INSURANCE COMMISSION

ORGANIZATION

3. Sections 2, 3, 4, 5 and 6 of the said Act are repealed and the following substituted therefor:

Commission
established

2.—(1) A commission to be known as the Ontario Insurance Commission is established.

Composition
of
Commission

(2) The Commission shall be composed of the Commissioner, the Superintendent and the Director.

Duties

(3) It is the duty of the Commission to administer and enforce this Act and to supervise generally, and make recommendations to the Minister in respect of, the business of insurance in Ontario.

Powers

(4) The Commission may exercise such powers as are necessary to carry out its functions under this Act.

Commis-
sioner

3.—(1) The Lieutenant Governor in Council shall appoint a commissioner of insurance who shall carry out the duties and exercise the powers of the Commissioner under this Act and every other Act that assigns duties to or confers powers on the Commissioner.

(2) The Commissioner is the chief executive officer of the Commission. Idem

(3) If the Commissioner is absent or if there is a vacancy in the office of the Commissioner, such person as may be designated by the Commissioner shall act as and have all the powers of the Commissioner. Acting Commissioner

(4) The Commissioner may delegate in writing any of his or her powers or duties to an employee of the Commission, subject to any limitation or condition set out in the delegation. Delegation

(5) The Commissioner may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Commissioner relating to such hearings. Idem

4.—(1) The Lieutenant Governor in Council shall appoint a superintendent of insurance who shall carry out the duties and exercise the powers of the Superintendent under this Act and every other Act that assigns duties to or confers powers on the Superintendent. Superintendent

(2) The Superintendent is the chief administrative officer of the Commission and shall carry out such duties respecting the administration and enforcement of this Act as may be assigned by the Commissioner. Idem

(3) If the Superintendent is absent or if there is a vacancy in the office of the Superintendent, such person as may be designated by the Superintendent shall act as and have all the powers of the Superintendent. Acting Superintendent

(4) The Superintendent may delegate in writing any of his or her powers or duties, including duties assigned to the Superintendent by the Commissioner, to an employee of the Commission, subject to any limitation or condition set out in the delegation. Delegation

(5) The Superintendent may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Superintendent relating to such hearings. Idem

5.—(1) Such employees as are required for the purposes of the Commission may be appointed under the *Public Service Act*. Staff
R.S.O. 1980,
c. 418

(2) The Commission may engage persons, other than those appointed under subsection (1), to provide professional, tech- Professional assistance

nical or other assistance to the Commission and may establish the duties and terms of engagement and provide for the payment of the remuneration and expenses of such persons.

Director of arbitrations

6.—(1) The Lieutenant Governor in Council shall appoint a director of arbitrations who shall carry out the duties and exercise the powers of the Director under this Act.

Acting Director

(2) If the Director is absent or if there is a vacancy in the office of Director, such person as may be designated by the Director shall act as and have all the powers of the Director.

Delegation

(3) The Director may delegate in writing any of his or her powers or duties to an employee of the Commission, subject to any limitation or condition set out in the delegation.

Idem

(4) The Director may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Director relating to such hearings.

Accident benefits advisory committee

6a. The Minister shall appoint an accident benefits advisory committee to make recommendations concerning persons qualified to be arbitrators, to advise the Commission concerning procedures to be used during arbitrations and to advise on such other matters as the Commission or the Minister may refer to the committee.

Arbitrators

6b.—(1) The Commissioner shall establish and maintain a roster of candidates chosen by him or her from the persons recommended by the accident benefits advisory committee to conduct arbitrations under this Act.

Appointment

(2) The Director shall appoint arbitrators only from the roster of candidates.

Mediators

6c. The Commissioner may appoint employees of the Commission or other persons to act as mediators.

Medical, etc., advisory panel

6d.—(1) The Commissioner shall appoint a medical and rehabilitation advisory panel to assist and advise the Director and arbitrators under this Act.

Appointment

(2) The panel shall consist of medical practitioners who are qualified to conduct medical assessments and other persons who are qualified to conduct rehabilitation assessments.

Chair

(3) The Commissioner shall designate a member of the panel to be its chair.

6e.—(1) No action or other proceeding for damages shall be instituted against any person acting under the authority of this Act or any Act listed in the Schedule to this subsection for any act done in good faith in the performance or intended performance of the person's duty or in the exercise or intended exercise of the person's powers or for any alleged neglect or default in the performance or execution in good faith of the person's duties or powers. Immunity

SCHEDULE TO SUBSECTION (1)

- | | | |
|----|---|------------------------|
| 1. | <i>Compulsory Automobile Insurance Act.</i> | R.S.O. 1980,
c. 83 |
| 2. | <i>Motor Vehicle Accident Claims Act.</i> | R.S.O. 1980,
c. 298 |
| 3. | <i>Prepaid Hospital and Medical Services Act.</i> | R.S.O. 1980,
c. 388 |
| 4. | <i>Registered Insurance Brokers Act.</i> | R.S.O. 1980,
c. 444 |

(2) Notwithstanding subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject. Crown
liability
R.S.O. 1980,
c. 393

(3) Except with the consent of the Commissioner, no person mentioned in subsection (1), other than the Commissioner, shall be required to testify in a civil proceeding, in a proceeding before the Commissioner or in a proceeding before any other tribunal respecting information obtained in the discharge of his or her duties under this Act or any Act listed in the Schedule to subsection (1). Testimony in
civil
proceedings

(4) Except with the consent of the Minister, the Commissioner shall not be required to testify in a civil proceeding or in a proceeding before any tribunal respecting information obtained in the discharge of his or her duties under this Act or any Act listed in the Schedule to subsection (1). Idem

6f. The Commissioner, the Superintendent, the Director and the employees of the Commission shall not be interested, directly or indirectly, other than as a policyholder, in any insurer, agent, adjuster or broker doing business in Ontario. Independence
of Commis-
sioner and
others

6g.—(1) The Commissioner shall at the close of each fiscal year file with the Minister an annual report upon the affairs of the Commission. Annual
report

Further
reports

(2) The Commissioner shall make such further reports and provide the Minister with such information as the Minister from time to time requires.

Tabling of
reports

(3) The Minister shall submit the reports to the Lieutenant Governor in Council and lay them before the Legislative Assembly if it is in session or, if not, at the next session.

Assessment
of insurers

6h.—(1) The Lieutenant Governor in Council may assess all insurers with respect to all expenses incurred and expenditures made by the Commission in the conduct of its affairs and an insurer shall pay the amount assessed against it.

Idem

(2) If an assessment is made under subsection (1), the share of a particular insurer shall be determined in the manner prescribed by regulation.

Idem

(3) The regulations made in respect of an assessment made under subsection (1) in respect of expenses and expenditures for dispute resolution under sections 242b to 242f may provide that the assessment may be based on such degree of usage of the dispute resolution system as may be provided in the regulations.

DECISIONS, HEARINGS AND APPEALS

Orders

6i.—(1) The Commissioner shall determine matters before him or her by order and may make an order subject to such conditions as are set out in the order.

Interim
orders

(2) The Commissioner may make interim orders pending the final order in a matter before him or her.

Proceedings
before the
Commis-
sioner

6j.—(1) For a proceeding before the Commissioner, the Commissioner may,

- (a) make rules for the practice and procedure to be observed;
- (b) determine what constitutes adequate public notice;
- (c) before or during the proceeding, conduct any inquiry or inspection the Commissioner considers necessary;
- (d) in determining any matter, consider any relevant information obtained by the Commission in addition to evidence given at the proceeding, if he or she first informs the parties to the proceedings of the

additional information and gives them an opportunity to explain or refute it.

(2) The costs of and incidental to a proceeding before the Commissioner are in his or her discretion and may be fixed in any case at a sum certain or may be assessed. Costs

(3) In awarding costs, the Commissioner is not limited to the considerations that govern the award of costs in any court. Idem

(4) The Commissioner may order by whom and to whom any costs are to be paid and by whom they are to be assessed and allowed. Idem

(5) The Commissioner may establish a scale under which such costs shall be assessed. Idem

(6) Costs awarded under this section may include the costs of the Commission, regard being had to the time and expenses of the Commission. Idem

6k.—(1) The Commissioner or the Superintendent, as the case may be, may reconsider and vary or revoke a decision or order made by him or her if he or she considers it advisable to do so. Variation of decisions

(2) The Commissioner or the Superintendent, as the case may be, is not required to hold a hearing when reconsidering his or her decision, but he or she shall allow the parties to make written submissions. No hearing

6-l.—(1) A person affected by a decision of the Superintendent may appeal the decision to the Commissioner. Appeal from Superintendent's decision

(2) A request for an appeal shall be in writing and shall be delivered to the Commission within thirty days after the date of the Superintendent's decision. Request for appeal

(3) The Commissioner shall hold a hearing of an appeal. Hearing

(4) The parties to an appeal are the person who requests the appeal, the Superintendent and such other persons as the Commissioner may specify. Parties

(5) Upon hearing an appeal, the Commissioner may confirm, vary or rescind the decision appealed from or substitute his or her decision for that of the Superintendent. Power of the Commissioner

6m.—(1) The Lieutenant Governor in Council may require the Commissioner to examine and report on any ques- Reference hearings

tion related to insurance that, in the opinion of the Lieutenant Governor in Council, requires a public hearing.

Parties

(2) The Commissioner shall determine who may be a party to a reference hearing.

Exclusive jurisdiction

6n.—(1) This section applies with respect to proceedings under this Act before the Commissioner, the Superintendent and the Director and before an arbitrator.

Idem

(2) A person referred to in subsection (1) has exclusive jurisdiction to exercise the powers conferred upon him or her under this Act and to determine all questions of fact or law that arise in any proceeding before him or her and, unless an appeal is provided under this Act, his or her decision thereon is final and conclusive for all purposes.

Decisions, etc., not stayed

(3) An application for judicial review and any appeal from an order of the court on the application does not stay the decision made under this Act.

Court may grant stay

(4) Notwithstanding subsection (3), a judge of the court to which the application is made or a subsequent appeal is taken may grant a stay until the disposition of the judicial review or appeal.

Arbitration proceedings

6o. Subject to the procedures and time limits for the conduct of arbitrations set out in the regulations, the Director may make rules for the practice and procedure to be observed for a proceeding before him or her or before an arbitrator.

Power to summon witnesses, etc.

6p.—(1) For the purpose of exercising the powers and performing their duties under this or any other Act, the Commissioner, the Superintendent, the Director and every arbitrator has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions.

Power to require evidence

(2) A person referred to in subsection (1) may require to be made or may take and receive affidavits or depositions and may examine witnesses upon oath.

Employment of stenographer

(3) The evidence and proceedings in any matter before a person referred to in subsection (1) may be reported by a stenographer who has taken an oath before the person to report the evidence and proceedings faithfully.

Oaths

(4) A person referred to in subsection (1) may administer and certify an oath required under this Act.

4. The said Act is amended by inserting before section 7 the following heading:

ADMINISTRATION

5. The said Act is further amended by adding thereto the following section:

7a. Records required under this Act to be prepared and maintained by the Commissioner or the Superintendent may be in bound or loose-leaf form or in photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time. Records

6. Subsections 8 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) The Commission may issue a certificate, Certificates

- (a) stating that on a stated day a person was or was not licensed under this Act, or that the licence was renewed, suspended, revived, revoked or cancelled on a stated day;
- (b) stating that a copy of, or extract from, a document or thing in the custody of the Commission is a true copy of, or extract from, the original;
- (c) stating the amount payable to the Treasurer of Ontario under subsection 14 (3) or (4);
- (d) stating the amount payable for an audit under subsection 80 (4);
- (e) stating whether a document was served or delivered under this Act;
- (f) stating whether any document required under this Act was filed;
- (g) stating whether a document or notification was received or issued by the Commissioner, the Superintendent, the Director, an arbitrator or a mediator under this Act;
- (h) giving particulars of the custody of any book, record, document or thing;

- (i) stating when the facts upon which a proceeding for an offence are based first came to the knowledge of the Commissioner or the Superintendent.

Idem

(3) The Commissioner or the Superintendent may sign certificates on behalf of the Commission.

7. The said Act is further amended by adding thereto the following section:

Official documents as evidence

8a.—(1) In this section, “official document” means a certificate, licence, order, decision, direction, inquiry or notice under this Act.

Idem

(2) An official document that purports to be signed on behalf of the Commission shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or the position of the person appearing to have signed the official document.

True copies as evidence

(3) A true copy certified by the Commission under clause 8 (2) (b) is admissible in evidence to the same extent as and has the same evidentiary value as the document or thing of which it is a copy.

8. Section 9 of the said Act is repealed and the following substituted therefor:

Right to a licence

9. It is the duty of the Superintendent to determine the right of an insurer in Ontario to be licensed under this Act but nothing in this section affects the right of the Lieutenant Governor in Council or the Commissioner to suspend or cancel any licence in the exercise of his or her authority under this Act.

9. Subsection 10 (3) of the said Act is repealed.

10. Sections 11, 12, 13, 14 and 15 of the said Act are repealed and the following substituted therefor:

Inquiries

11. The Superintendent or a person designated by the Commissioner may direct to an insurer any inquiry related to the contracts, financial affairs or the acts and practices of the insurer, and the insurer shall answer promptly, explicitly and completely.

Right of access

12. The Superintendent or a person designated by the Commissioner may at any reasonable time examine the books,

securities, documents and things related to the business of an insurer, agent, adjuster or broker.

13.—(1) Persons who are licensed under this Act, officers and agents of an insurer and the chief agent of an insurer that has its head office outside Ontario shall, on request, furnish the Superintendent or a person designated by the Commissioner with full information, Duty to furnish information

- (a) relating to any contract of insurance issued by an insurer;
- (b) relating to any settlement or adjustment under a contract of insurance; or
- (c) respecting any activities related to the business of insurance.

(2) An insured person shall, on request, furnish the Superintendent or person designated by the Commissioner with full information relating to any contract of insurance issued to the insured person or to any settlement or adjustment affecting the insured person under a contract of insurance. Idem

14.—(1) Once each year or more frequently as the Superintendent may consider appropriate for all insurers or for a particular insurer, the Superintendent or a person appointed by the Superintendent, Examination of insurers

- (a) shall examine an insurer's statement made under section 81;
- (b) may make such inquiries as are necessary to ascertain the insurer's condition and ability to meet its obligations as and when they become due; and
- (c) may make such inquiries as are necessary to ascertain whether the insurer has complied with the requirements of this Act applicable to its transactions.

(2) Subsection (1) does not apply so as to require an examination of an insurer, Exception

- (a) that is a mutual benefit society with fewer than 300 members; or
- (b) in respect of which the Superintendent adopts an examination by another government.

Preparation
of abstracts,
valuation

(3) The Superintendent may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets and liabilities of an insurer and the insurer shall pay the Treasurer of Ontario for the cost of the preparation of the abstracts or the valuation upon receiving a certificate of the Commission stating the amount payable.

Expenses of
examination

(4) Where the office of an insurer at which an examination is made under this section is outside Ontario, the insurer shall pay the Treasurer of Ontario for the cost of the examination upon receiving a certificate of the Commission stating the amount payable.

Service of
documents

15.—(1) Service of any document for any purpose of this Act, where the method is not otherwise specified, may be made,

- (a) on any person, by personal service on the person to be served;
- (b) on an insurer, by first class registered mail addressed to the insurer or its chief executive officer at the insurer's head office in Ontario as identified in the records of the Superintendent;
- (c) on a person who is not an insurer, by first class registered mail addressed to the person's last known address;
- (d) on any person, by leaving a copy of the document with the solicitor, if any, of the person to be served, or with an employee in the solicitor's office; or
- (e) on any person, by telephone transmission of a facsimile of the document in accordance with subsection (7).

Service at
place of
residence

(2) Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

- (a) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and
- (b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.

(3) Service at a person's place of residence under subsection (2) is effective on the fifth day after the document is mailed.

Effective date of service

(4) Service by first class registered mail is not effective unless a post office receipt for the mail bearing a signature that purports to be the signature of the person to be served or of an officer of an insurer is received by the sender.

Requirements for service by mail

(5) Service by first class registered mail is effective on the date on which the sender of the mail receives the receipt described in subsection (4).

Effective date of service by mail

(6) Service on a solicitor is not effective unless the solicitor endorses on the document or a copy of it an acceptance of service on behalf of his or her client and the date of the acceptance.

Acceptance of service by a solicitor

(7) A document that is served by telephone transmission shall include a cover page indicating,

Requirements for service by facsimile

- (a) the sender's name, address and telephone number;
- (b) the name of the person to be served;
- (c) the date and time of transmission;
- (d) the total number of pages transmitted, including the cover page;
- (e) the telephone number from which the document is transmitted; and
- (f) the name and telephone number of a person to contact in the event of transmission problems.

15a.—(1) Where an attempt is made to effect service under subsection 15 (1) on an insurer or an agent, and for any reason service cannot be effected, the document may be served on the Superintendent and such service shall be deemed to be service on the insurer or agent.

Deemed service

(2) Service may be made on the Superintendent under subsection (1) by first class registered mail addressed to the Superintendent at the Superintendent's office, or by personal service on the Superintendent.

Method of service

(3) Where a document is served on the Superintendent under subsection (1), the Superintendent shall forthwith mail the document to the insurer or agent at the address for the

Superintendent to forward document

insurer or agent contained in the records of the Superintendent.

11. Section 18 of the said Act is repealed and the following substituted therefor:

Publication
by
Commission

18. The Commission may publish any information that the Commissioner, the Superintendent or the Director considers to be in the public interest.

12.—(1) Subsections 21 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:

Necessity for
licence

(1) Every insurer undertaking insurance in Ontario or carrying on business in Ontario shall obtain from the Commissioner and hold a licence under this Act.

Prohibition
re: licence

(2) No person shall carry on business as an insurer or engage in an act constituting the business of insurance in Ontario without a licence under this Act.

Idem

(2a) No insurer shall carry on business in Ontario as an insurer of a class of insurance that is not authorized by its licence under this Act.

Prohibition
against acting
on behalf of
unlicensed
insurer

(3) No person in Ontario shall do or cause to be done any act or thing mentioned in subsection 20 (3) on behalf of or as agent of an insurer that is not licensed under this Act.

(2) Subsection 21 (5) of the said Act is repealed and the following substituted therefor:

Unauthorized
insurance

(5) No insurer that is incorporated in Ontario and licensed under this Act shall carry on or solicit business as an insurer in another jurisdiction unless it is authorized to do so under the laws of that jurisdiction.

13. Subsection 23 (1) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

14. Subsection 24 (4) of the said Act is repealed and the following substituted therefor:

Conditions

(4) A licence may be issued subject to such limitations and conditions as may be prescribed by regulation.

15. Paragraph 1 of subsection 25 (1) of the said Act is amended by striking out “benefits set forth in Schedule C” in

the last line and inserting in lieu thereof “no-fault benefits required by subsection 232 (1)”.

16.—(1) Subsection 28 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out “Minister” in the seventh line and inserting in lieu thereof “Commissioner”.

(2) Subsection 28 (1a) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(3) Subsection 28 (1b) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

17. Subsection 32 (3) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

18. Subsection 33 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

19.—(1) Subsection 35 (1) of the said Act is amended by striking out “Minister” in the third line and inserting in lieu thereof “Commissioner”.

(2) Subsection 35 (3) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

(3) Subsection 35 (4) of the said Act is amended by striking out “Minister” in the first line and in the tenth line and inserting in lieu thereof in each instance “Commissioner”.

20. Subsection 36 (1) of the said Act is amended by striking out “Minister” in the sixth line and inserting in lieu thereof “Commissioner”.

21. Section 37 of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

22.—(1) Subsection 38 (1) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 38 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

(3) Subsection 38 (3) of the said Act is amended by striking out “Minister” in the third line and inserting in lieu thereof “Commissioner”.

(4) Subsection 38 (4) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

23. Subsection 39 (1) of the said Act is amended by striking out “Minister” in the tenth line and in the eleventh line and inserting in lieu thereof in each instance “Commissioner”.

24.—(1) Subsection 40 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 6, is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 40 (2) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 6, is further amended by striking out “Minister” in the first line and in the sixth line and inserting in lieu thereof in each instance “Commissioner”.

(3) Subsection 40 (3) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 6, is further amended by striking out “Minister” in the third and fourth lines and in the fourth line and inserting in lieu thereof in each instance “Commissioner”.

(4) Subsection 40 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 6, is amended by striking out “Minister” in the first line and in the second line and inserting in lieu thereof in each instance “Commissioner”.

25.—(1) Subsection 41 (2) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

(2) Subsection 41 (3) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(3) Subsection 41 (4) of the said Act is amended by striking out “Minister” in the first line and in the sixth line and inserting in lieu thereof in each instance “Commissioner”.

(4) Subsection 41 (5) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

26.—(1) Subsection 42 (3) of the said Act is amended by striking out “Minister” in the first line, in the fourth line and in the eighth line and inserting in lieu thereof in each instance “Commissioner”.

(2) Subsection 42 (4) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

(3) Subsection 42 (6) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

27. Section 43 of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

28. Section 44 of the said Act is amended by striking out “Minister” in the second line and in the third line and inserting in lieu thereof in each instance “Commissioner”.

29. Section 79 of the said Act is amended by striking out “Superintendent” in the fourth line and inserting in lieu thereof “Commissioner”.

30.—(1) Subsection 80 (1) of the said Act is repealed and the following substituted therefor:

(1) When required by the Commissioner, licensed insurers shall prepare and file with the Commission or with an agency designated by the Commissioner a return respecting the experience of the insurer’s business in a form approved by the Commissioner containing such information as the Commissioner may require.

Returns

(2) Subsections 80 (3), (4) and (5) of the said Act are repealed and the following substituted therefor:

(3) If it appears to the Commissioner that the insurer’s records of premium income and claims paid are not kept in such a manner as to show correctly the experience of the insurer for the purposes of the return, the Commissioner may nominate an accountant to proceed under his or her direction to audit the books and records of the insurer and to give such instructions as will enable the officers of the insurer to keep the records correctly after the audit.

Audit and
direction

Expenses of
audit

(4) The insurer shall pay the accountant for an audit under subsection (3) forthwith upon receiving a certificate of the Commission stating the amount payable.

Debt to the
Crown

(5) Any amount payable to an accountant under subsection (3) that is not paid within thirty days from the date on which the insurer receives the Commission's certificate becomes a debt owing to the Crown.

31.—(1) Subsection 81 (1) of the said Act is repealed and the following substituted therefor:

Annual and
interim
statements

(1) Subject to sections 323 and 327, every licensed insurer shall,

- (a) prepare annually and deliver to the Superintendent, on or before the prescribed date for the prescribed category of insurer, a statement of the condition of affairs of the insurer for the year that ended on the 31st day of December next preceding the delivery of the statement; and
- (b) prepare and deliver to the Superintendent when required by the Superintendent, for the prescribed category of insurer, an interim statement for the period specified by the Superintendent containing such information as the Superintendent considers necessary to assess the insurer's condition of affairs.

Contents of
annual
statement

(1a) A statement of the condition of affairs of an insurer under clause (1) (a) shall be in a form approved by the Superintendent, and shall set out,

- (a) the assets, liabilities, revenues and expenses of the insurer for the year;
- (b) particulars of the business done by the insurer in Ontario during the year; and
- (c) such other information as the Superintendent considers necessary to assess an insurer's condition of affairs.

Auditor's
report

(1b) A statement of the condition of affairs of an insurer under clause (1) (a) shall be accompanied by a report of an auditor prepared in the manner required by the Superintendent.

(2) Subsection 81 (2) of the said Act is amended by striking out “subsection (1)” in the fourth line and inserting in lieu thereof “clause (1) (a)”.

(3) Subsections 81 (4), (5), (6), (7), (8) and (9) of the said Act are repealed and the following substituted therefor:

(4) The Superintendent is authorized to obtain from insurers personal information about identifiable individuals where the collection of the information is required to monitor the condition of affairs of the insurer and the information is collected on a statement made under subsection (1).

Indirect
collection of
personal
information

32. The said Act is further amended by adding thereto the following sections:

81a. Notice of the requirements for returns under section 80 or 81 is sufficient if it is sent by first class ordinary mail addressed to the insurer at the insurer’s address for service of notice or process as identified in the records of the Superintendent.

Notice of
returns

81b. The financial statements required under this Act shall be prepared in accordance with this Act and the regulations.

Preparation
of financial
statements

33. Subsection 87 (7) of the said Act is amended by striking out “Minister” in the twentieth line and in the twenty-first line and inserting in lieu thereof in each instance “Commissioner”.

34. Section 93 of the said Act is amended by striking out “Superintendent” in the second line and inserting in lieu thereof “Commission”.

35. Subsection 94 (2) of the said Act is amended by striking out “Minister” in the first line and in the fifth line and inserting in lieu thereof in each instance “Commissioner”.

36. Section 97 of the said Act and the heading “Penalties” preceding section 97 are repealed.

37.—(1) Clause 98 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) prescribing fees in relation to matters under this Act, including fees for licences and their renewal, for the filing of documents and, for any services provided by or through the Ministry of Financial Institutions or the Commission.

(2) Clause 98 (1) (b) of the said Act is repealed and the following substituted therefor:

- (b) establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits;
- (ba) requiring insurers to offer optional benefits in excess of the benefits that must be provided under clause (b) and establishing terms, conditions, provisions, exclusions and limits related to such benefits;
- (bb) prescribing categories of insurers for the purpose of subsection 80 (1), requiring insurers to file a return under that subsection by category and prescribing the information that insurers may solicit from insured persons for purposes of such returns;
- (bc) prescribing categories of insurers for the purpose of subsection 81 (1);
- (bd) prescribing dates for the purpose of clause 81 (1) (a);
- (be) governing the preparation of financial statements required under this Act or the regulations;
- (bf) prescribing the information to be given to applicants or to insured persons under subsection 203b (1) and the circumstances in which it is to be given;
- (bg) establishing requirements that must be met before an insurer declines to issue, terminates or refuses to renew a contract of automobile insurance or refuses to provide or continue any coverage or endorsement in respect thereof;
- (bh) prescribing grounds for which an insurer cannot decline to issue, terminate or refuse to renew a contract of automobile insurance or refuse to provide or continue any coverage or endorsement in respect thereof;
- (bi) prescribing coverages and endorsements for the purposes of section 208b;
- (bj) governing the payment of premiums for automobile insurance in instalments, setting maximum rates of

interest in relation to instalment payments and exempting any insurer, class of insurers or class of policies from statutory condition 1c set out in section 207;

(bk) exempting any insurer, and exempting any insurer in respect of certain types of contracts of automobile insurance, from section 208a;

(bl) prescribing rules for determining the degree of fault in various situations for loss or damage arising directly or indirectly from the use or operation of an automobile;

➡
(bm) providing for and governing indemnification and subrogation where section 230a applies;

(bn) prescribing any activity or failure to act that constitutes an unfair or deceptive act or practice under subclause 393 (b) (xii) and prescribing requirements that, if not complied with, constitute an unfair or deceptive act or practice;

(bo) prescribing classes of persons, classes of automobiles and terms, conditions, provisions, exclusions and limits for the purposes of subsection 239b (1);

(bp) prescribing rules of procedure and setting time-limits in respect of mediation, arbitration, appeal and variation proceedings under sections 242b to 242f; ⬆

(bq) prescribing expenses that may be awarded to insured persons under subsection 242d (11) and setting maximum amounts that may be awarded for such expenses;

(br) permitting the Director to vary or revoke orders and prescribing rules of procedure and setting conditions and setting time-limits in respect thereof and permitting the Director to proceed by way of a hearing or by way of written submissions.

(3) Subsection 98 (1) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 8 and 1987, chapter 8, section 3, is further amended by adding thereto the following clauses:

- (fa) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance in respect of which sections 369 to 372b apply;
- (fb) prescribing classes of risk exposure to be used by insurers in determining the rates for each coverage and category of automobile insurance;
- (fc) prescribing classes of risk exposure which insurers are prohibited from using in determining the rates for each coverage and category of automobile insurance;
- (fd) prescribing, for the purpose of section 6h, the method of determining the share of an assessment that is payable by an insurer.

38. Subsection 143 (3) of the said Act is amended by striking out “Minister” in the fourth line and inserting in lieu thereof “Commissioner”.

39. Section 201 of the said Act is repealed and the following substituted therefor:

Definitions

201.—(1) In this Part,

“automobile”, includes a motor vehicle required under any Act to be insured under a motor vehicle liability policy;

“contract” means a contract of automobile insurance;

“excluded driver” means a person named as an excluded driver in an endorsement under section 217a;

“fault determination rules” means the rules prescribed under clause 98 (1) (b);

“insured” means a person insured by a contract whether named or not and includes every person who is entitled to no-fault benefits under the contract whether or not described therein as an insured person;

“no-fault benefits” means the benefits set out in the regulations made under clauses 98 (1) (b) and (ba);

“*No-Fault Benefits Schedule*” means the regulations made under clauses 98 (1) (b) and (ba);

“occupant”, in respect of an automobile, means,

- (a) the driver,
- (b) a passenger, whether being carried in or on the automobile,
- (c) a person getting into or on or getting out of or off the automobile;

“spouse” means either of a man and a woman who,

- (a) are married to each other,
- (b) have together in good faith entered into a marriage, or
- (c) are not married to each other and have cohabited continuously for a period of not less than three years, or have cohabited in a relationship of some permanence if they are the natural or adoptive parents of a child.

(2) A reference to Schedule C in any other Act or in any regulation, contract or other instrument shall be deemed to be a reference to the *No-Fault Benefits Schedule* and a reference to benefits under Schedule C shall be deemed to be a reference to no-fault benefits. Transition

(3) Every contract to which subsection 232 (1) applies shall be deemed to have been amended on the day this subsection comes into force to include no-fault benefits in accordance with the *No-Fault Benefits Schedule*. Idem

(4) The benefits of a person who, before the coming into force of this subsection, was entitled to benefits under Schedule C shall be determined in accordance with this Act as it read immediately before the repeal of Schedule C. Idem

(5) For the purposes of subsections (2) and (4), “Schedule C” means Schedule C to this Act as this Act read before the coming into force of this subsection. Idem

(6) An insurer, with the approval of the Commissioner, may offer optional benefits in excess of the benefits that must be provided under the *No-Fault Benefits Schedule*. Additional benefits

(7) Optional benefits offered under subsection (6) shall be deemed to be no-fault benefits and the *No-Fault Benefits Schedule* applies to them with necessary modifications. Idem

40. The said Act is further amended by adding thereto the following section:

Exception re:
insured

201a. Except as provided in the *No-Fault Benefits Schedule*, the insured under a contract shall be deemed not to include any person who sustains loss or damage while any automobile insured under the contract is being used or operated by an excluded driver.

41.—(1) Subsections 203 (1) and (2) of the said Act are repealed and the following substituted therefor:

Approval of
forms

(1) No insurer shall use a form of policy, endorsement or renewal, a claims form or a continuation certificate in respect of automobile insurance other than a form approved by the Commissioner.

(2) Section 203 of the said Act is amended by striking out “Superintendent” wherever it occurs and inserting in lieu thereof in each instance “Commissioner”.

42. The said Act is further amended by adding thereto the following sections:

Application
form

203a. Where so required by the regulations, no insurer shall use a form of application other than a prescribed form.

OTHER INFORMATION

Information
for
applicants,
etc.

203b.—(1) An insurer shall supply at such times as may be prescribed such information as may be prescribed to applicants for automobile insurance and to named insureds under contracts.

Information
deemed to
be part of
application

(2) Information supplied under subsection (1) by an insurer to an applicant for automobile insurance shall be deemed to be a part of the application.

Information
from brokers

203c. A broker shall provide, on the request of an applicant for insurance, the names of all insurers with whom the broker has an agency contract relating to automobile insurance and all information obtained by the broker relating to quotations on automobile insurance for the applicant.

43.—(1) Subsection 205 (5) of the said Act is amended by striking out “Superintendent” in the third line and inserting in lieu thereof “Commissioner”.

(2) Subsection 205 (7) of the said Act is amended by striking out “Superintendent” in the fourth and fifth lines and inserting in lieu thereof “Commissioner”.

44. Section 206 of the said Act is amended by adding thereto the following subsection:

(1a) Subsection (1) does not invalidate such no-fault benefits as are set out in the *No-Fault Benefits Schedule*. No-fault
benefits
protected

45.—(1) Subsection 207 (1) of the said Act is amended by striking out “subsection 203 (2), section 208 and section 229” in the first and second lines and inserting in lieu thereof “sections 208 and 229”.

(2) The statutory conditions set out in section 207 of the said Act are amended by adding thereto the following:

**No-Fault
Benefits
Protected**

1a. Despite a failure to comply with statutory condition 1 (1), a person is entitled to such no-fault benefits as are set out in the *No-Fault Benefits Schedule*.

**Refund of
Premium
Overpayment**

1b.—(1) Where the insured has been incorrectly classified with respect to a risk exposure under this contract under the risk classification scheme used by the insurer or that the insurer is required by law to use, the insurer shall make the necessary correction, and shall refund to the insured the amount of any premium overpayment together with interest thereon for the period that the incorrect classification was in effect at the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the incorrect classification was first made rounded to the next highest whole number if the bank rate includes a fraction.

Definition

(2) In this statutory condition, “bank rate” means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule I to the *Bank Act* (Canada).

**Monthly
Payments**

1c. Unless otherwise provided by the regulations under the *Insurance Act*, the insured may pay the premium, without penalty, in equal monthly payments totalling the amount of the premium. The insurer may charge interest not exceeding the rate set out in the regulations.

(3) Statutory condition 2 set out in the said section 207 is struck out and the following substituted therefor:

**Authority to
drive**

2.—(1) The insured shall not drive or operate or permit any other person to drive or operate the automobile unless the insured or other person is authorized by law to drive or operate it.

Prohibited use

(2) The insured shall not use or permit the use of the automobile in a race or speed test or for any illicit or prohibited trade or transportation.

(4) Statutory condition 3 (1) (a) set out in the said section 207 is amended by striking out “promptly” in the first line and is further amended by striking out “accident” in the last line and inserting in lieu thereof “incident”.

(5) Statutory condition 4 (1) (a) set out in the said section 207 is amended by striking out “promptly” in the first line.

(6) Statutory condition 4 (8) set out in the said section 207 is repealed.

(7) The said statutory conditions are further amended by adding the following:

Time limit

4a. The notice required by statutory conditions 3 and 4 shall be given to the insurer within seven days of the incident but if the insured is unable because of incapacity to give the notice within seven days of the incident, the insured shall comply as soon as possible thereafter.

(8) Statutory condition 6 set out in the said section 207 is repealed and the following substituted therefor:

Time and manner of payment of insurance money

6.—(1) The insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it.

When action may be brought

(2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with.

Limitation of actions

(3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile or its contents shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or other property shall be commenced within two years next after the cause of action arose and not afterwards.

(9) Statutory condition 7 set out in the said section 207 is amended by striking out “named in this contract” in the second and third lines.



46. Subsection 208 (1) of the said Act is amended by striking out “232 or 233” in the last line and inserting in lieu thereof “or 232”.

47. The said Act is further amended by adding thereto the following sections:

208a.—(1) If an insurer does not intend to renew a contract or if an insurer proposes to renew a contract on varied terms, the insurer shall, Notice of expiry or variation

- (a) give the named insured not less than thirty days notice in writing of the insurer's intention or proposal; or
- (b) give the broker, if any, through whom the contract was placed forty-five days notice in writing of the insurer's intention or proposal.

(2) Subject to subsection (4), a broker to whom an insurer has given notice under clause (1) (b) shall give the named insured under the contract not less than thirty days notice in writing of the insurer's intention or proposal. Idem

(3) Notices given under subsections (1) and (2) shall set out the reasons for the insurer's intention or proposal. Reasons

(4) Where, before a broker is required to have given notice to a named insured under subsection (2), the broker places with another insurer a replacement contract containing substantially similar terms as the expiring contract, the broker is exempted from giving notice under subsection (2). Exception

(5) A contract of insurance is in force until there is compliance with subsections (1), (2) and (3). Effect of failure to comply

(6) This section comes into force on a day to be named by proclamation of the Lieutenant Governor. Coming into force

208b.—(1) If so required by the regulations and unless the insurer has complied therewith, an insurer shall not decline to issue or terminate or refuse to renew a contract in respect of such coverages and endorsements as may be set out in the regulations or decline to issue, terminate or refuse to renew any contract or refuse to provide or continue any coverage or endorsement on any ground set out in the regulations. Limitation on termination

(2) The Commissioner may require insurers, agents and brokers to provide such information, material and evidence as the Commissioner considers necessary to determine compliance with subsection (1). Information

Exemption (3) An insurer may apply to the Commissioner for an exemption from subsection (1).

Idem (4) An application for an exemption from compliance with subsection (1) shall be in a form approved by the Commissioner and shall be filed together with such information, materials and evidence as the Commissioner considers necessary.

Idem (5) The Commissioner may exempt an insurer in whole or in part from compliance with subsection (1) if, in the opinion of the Commissioner, compliance with the regulations would impair the solvency of the insurer or would cause the insurer to be in contravention of this Act or the regulations.

Non-application (6) Subsection (1) does not apply in respect of a contract if any payment in respect of premiums payable under the contract or under any ancillary agreement is overdue or if,

(a) the insured has given false particulars of the described automobile to the prejudice of the insurer;

(b) the insured has knowingly misrepresented or failed to disclose in an application for insurance any fact required to be stated therein.

Grounds to terminate, etc., filed

208c.—(1) Every insurer shall file with the Commission a list of the grounds for which the insurer declines to issue, terminates or refuses to renew a contract or for which the insurer refuses to provide or continue a coverage or endorsement.

Information

(2) The Commissioner may require insurers, agents and brokers to provide such information, material and evidence as the Commissioner considers necessary to determine the manner in which any ground is applied by the insurer.

Permitted grounds

(3) An insurer shall not decline to issue, terminate or refuse to renew a contract or refuse to provide or continue a coverage or endorsement, except on a ground set out in the list filed with the Commission.

Hearing

(4) The Commissioner may order, at any time, a hearing with respect to any ground set out in the list filed with the Commission if the Commissioner is of the opinion that the ground or the manner in which it is applied,

(a) is subjective;

(b) is arbitrary;

- (c) bears little or no relationship to the risk to be borne by the insurer in respect of an insured; or
- (d) is contrary to public policy.

➡ (5) Following a hearing with respect to a ground, the Commissioner, Prohibition

- (a) may prohibit an insurer from declining to issue, terminating or refusing to renew any contract or from refusing to provide or continue any coverage or endorsement on that ground; or
- (b) may prohibit an insurer from applying that ground, in the manner specified by the Commissioner, to decline to issue, terminate or refuse to renew any contract or refuse to provide or continue any coverage or endorsement. ⬆

48.—(1) Subsection 209 (1) of the said Act is repealed and the following substituted therefor:

(1) Subject to section 209a, every contract evidenced by an owner's policy insures the person named therein and every other person who with the named person's consent drives, or is an occupant of, an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage, Coverage of owner's policy, specific automobile

- (a) arising from the ownership or directly or indirectly from the use or operation of any such automobile; and
- (b) resulting from bodily injury to or the death of any person and damage to property.

(1a) A lack of consent does not invalidate such no-fault benefits as are set out in the *No-Fault Benefits Schedule*. Saving, no-fault benefits

(2) Paragraph 1 of subsection 209 (3) of the said Act is repealed and the following substituted therefor:

1. The spouse of the deceased insured.

49. The said Act is further amended by adding thereto the following section:

Insurer not
liable re:
excluded
driver

209a. If a contract evidenced by a motor vehicle liability policy names an excluded driver, the insurer is not liable to any person under the contract or under this Act or the regulations for any loss or damage that occurs while the excluded driver is driving an automobile insured under the contract, except as provided in the *No-Fault Benefits Schedule*.

50. Clause 210 (a) of the said Act is amended by inserting after “arising” in the first line “directly or indirectly”.

51. Section 214 of the said Act is amended by inserting before “use” in the fourth line “or directly or indirectly from the”.

52. The said Act is further amended by adding thereto the following section:

Excluded
driver
endorsement

217a. A named insured may stipulate by endorsement to a contract evidenced by a motor vehicle liability policy that any person named in the endorsement is an excluded driver under the contract.

53. Subsection 218 (1) of the said Act is amended by inserting after “that” in the third line “except as provided in the *No-Fault Benefits Schedule*”.

54. Subsection 220 (1) of the said Act is amended by inserting after “ownership” in the third line “or directly or indirectly out of the”.

55. The said Act is further amended by adding thereto the following sections:

DIRECT COMPENSATION—PROPERTY DAMAGE

Application

230a.—(1) This section applies if an automobile or its contents, or both, suffers damage arising directly or indirectly from the use or operation in Ontario of any other automobile and both are insured under contracts evidenced by motor vehicle liability policies issued by insurers licensed to undertake insurance in Ontario.

Damage
recovery
from
insured’s
insurer

(2) If this section applies, an insured is entitled to recover for the damages to the insured’s automobile and its contents and for loss of use from the insured’s insurer under the coverage described in subsection 209 (1) as though the insured were a third party.

(3) Recovery under subsection (2) shall be based on the degree of fault of the insurer's insured as determined under the fault determination rules. Idem

(4) An insured may bring an action against the insurer if the insured is not satisfied that the degree of fault established under the fault determination rules accurately reflects the actual degree of fault or the insured is not satisfied with a proposed settlement and the matters in issue shall be determined in accordance with the ordinary rules of law. Dispute resolution

(5) If this section applies, Restrictions on other recovery

(a) an insured has no right of action against any person involved in the incident other than the insured's insurer for damages to the insured's automobile or its contents or for loss of use;

(b) an insurer, except as permitted by the regulations, has no right of indemnification from or subrogation against any person for payments made to its insured under this section.

(6) This section does not affect an insured's right to recover in respect of any physical damage coverage in respect of the insured automobile. Other coverages not affected

(7) This section does not apply to damages to those contents of an automobile that are being carried for reward. Non-application

(8) This section does not apply if the damage occurred before the coming into force of this section. Idem

➡ (9) This section does not apply if both automobiles are owned by the same person. Idem

(10) This section does not apply to damage to an automobile owned by the insured or to its contents if the damage is caused by the insured while driving another automobile. Idem



NOTICE OF DAMAGE

230b.—(1) If an automobile insured under a contract is involved in an incident that is required to be reported to police under the *Highway Traffic Act*, the insured shall give to the insurer written notice, with all available particulars, of the incident. Notice to insurer
R.S.O. 1980,
c. 198

Idem (2) Subject to subsection (3), the notice required by subsection (1) shall be given to the insurer within seven days of the incident.

Idem (3) If the insured is unable because of incapacity to comply with subsection (1) within seven days of the incident, the insured shall comply as soon as possible thereafter.

Idem (4) Compliance with this section shall be deemed to be compliance with statutory conditions 3 (1) (a) and 4 (1) (a) set out in section 207.

56.—(1) Clause 231 (2) (b) of the said Act is amended,

(a) by striking out “if residing in the same dwelling premises as the insured” in the first and second lines of sub-subclause (B); and

(b) by striking out “if residing in the same dwelling premises as such person” in the fifth, sixth and seventh lines of sub-subclause (C).

(2) Section 231 of the said Act is amended by adding thereto the following subsection:

Exclusion
from
coverage

(2a) Notwithstanding clause 231 (2) (b), a person who sustains loss or damage while the insured automobile is being used or operated by an excluded driver shall be deemed not to be a person insured under the contract in which the excluded driver is named, except as provided in the *No-Fault Benefits Schedule*.

(3) The said section 231 is further amended by adding thereto the following subsections:

Restriction
on recovery

(5a) No person has a right of action against any other person in respect of damage to an uninsured automobile or its contents arising directly or indirectly from the use or operation of an automobile if at the time of the damage the uninsured automobile was required by any Act to be insured under a contract evidenced by a motor vehicle liability policy.

(4) Subsection 231 (6) of the said Act is repealed and the following substituted therefor:

Release

(6) A release under section 239a does not enure to the benefit of any person against whom the insurer may subrogate under subsection (5).

57. Sections 232, 233 and 234 of the said Act are repealed and the following substituted therefor:

231a.—(1) In respect of loss or damage arising directly or indirectly from the use or operation, after this section comes into force, of an automobile and despite any other Act, none of the owner of an automobile, the occupants of an automobile or any person present at the incident are liable in an action in Ontario for loss or damage from bodily injury arising from such use or operation in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* involving the automobile unless, as a result of such use or operation, the injured person has died or has sustained,

No-fault
principle
established

- (a) permanent serious disfigurement; or
- (b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

(2) Subsection (1) does not relieve any person from liability other than the owner of the automobile, occupants of the automobile and persons present at the incident.

Idem

(3) In an action for loss or damage from bodily injury arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before or at trial, determine if the injured person has, as a result of the accident, died or has sustained,

Judicial
determination

- (a) permanent serious disfigurement; or
- (b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

(4) Even though a defence motion under subsection (3) is denied, the defendant may, at trial, in the absence of the jury, and following the hearing of evidence, raise the defence provided in subsection (1).

Idem

(5) In a proceeding involving a plaintiff who cannot recover against the owner of an automobile, the occupant of an automobile or a person present at the incident because of the operation of subsection (1), a defendant is not liable for damages caused by any person who is excluded from liability because of the operation of subsection (1) and is not liable to contribute or indemnify in respect of such damages.

Joint and
several
liability,
joint
tort-feasors

Idem

(6) For the purposes of subsection (5), the proportion of liability of all persons involved in the incident from which the proceeding arose shall be determined as though all persons wholly or partly responsible for the loss or damage were parties to the proceeding even though any such person is not actually a party.

Definition

R.S.O. 1980,
c. 198

(7) For the purposes of this section, "owner" includes an operator as defined in subsection 15a (1) of the *Highway Traffic Act*.

Collateral
source rule
not to apply

231b.—(1) The damages awarded to a person in a proceeding for loss or damage arising directly or indirectly from the use or operation of an automobile shall be reduced by,

- (a) all payments that the person has received or that were or are available for no-fault benefits and by the present value of any no-fault benefits to which he or she is entitled;
- (b) all payments that the person has received under any medical, surgical, dental, hospitalization, rehabilitation or long-term care plan or law and by the present value of such payments to which he or she is entitled;
- (c) all payments that the person has received or that were or are available for loss of income under the laws of any jurisdiction or under an income continuation benefit plan and by the present value of any such payments to which he or she is entitled; and
- (d) all payments that the person has received under a sick leave plan arising by reason of the person's occupation or employment.

Exception

R.S.O. 1980,
c. 505

(2) Payments or benefits received or that were, are or may become available to a person under the *Workers' Compensation Act* shall not be applied under subsection (1) to reduce the damages awarded.

Idem

(3) A reduction made under subsection (1) does not apply for the purpose of determining a person's entitlement to compensation under subsection 8 (2) of the *Workers' Compensation Act*.

Limitation on
subrogation

(4) A person who has made a payment or who has a liability to pay a benefit described in clause (1) (a), (b), (c) or (d) is not subrogated to a right of recovery of the insured against another person in respect of that payment or benefit.

(5) The Workers' Compensation Board is not subrogated to a right of recovery of the insured against another person in respect of a payment or benefit paid by the Workers' Compensation Board to the insured or in respect of a liability to make such payment or benefit. Idem

(6) This section applies to damages awarded for loss or damage arising directly or indirectly from the use or operation, after the 23rd day of October, 1989, of an automobile. Application

232.—(1) Every contract evidenced by a motor vehicle liability policy shall provide for the no-fault benefits set out in the *No-Fault Benefits Schedule*, subject to the terms, conditions, provisions, exclusions and limits set out in that Schedule. No-fault benefits

(2) The following rules apply for determining who is liable to pay no-fault benefits: Liability to pay

1. In respect of an occupant of an automobile,
 - i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,
 - ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,
 - iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to no-fault benefits arose,
 - iv. if recovery is unavailable under subparagraph i, ii or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.
2. In respect of non-occupants,
 - i. the non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an insured,
 - ii. if recovery is unavailable under subparagraph i, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,

iii. if recovery is unavailable under subparagraph i or ii, the non-occupant has recourse against the insurer of any automobile involved in the incident from which the entitlement to no-fault benefits arose,

iv. if recovery is unavailable under subparagraph i, ii or iii, the non-occupant has recourse against the Motor Vehicle Accident Claims Fund.

Liability

(3) An insurer against whom a person has recourse for the payment of no-fault benefits is liable to pay the benefits.

Choice of insurer

(4) If, under subparagraph i or iii of paragraph 1 or subparagraph i or iii of paragraph 2 of subsection (2), a person has recourse against more than one insurer for the payment of no-fault benefits, the person, in his or her absolute discretion, may decide the insurer from which he or she will claim the benefits.

Idem

(5) Despite subsection (4), if a person is a named insured under a contract evidenced by a motor vehicle liability policy or the person is the spouse or a dependant, as defined in the No-Fault Benefits Schedule, of a named insured, the person shall claim no-fault benefits against the insurer under that policy and, if there is more than one such policy, the person, in his or her discretion, may decide the insurer from which he or she will claim the benefits.

Excess insurance

(6) The insurance mentioned in subsection (1) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses.

Idem

(7) The insurance mentioned in subsection (1) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses.

Payments pending dispute resolution

(8) Where the *No-Fault Benefits Schedule* provides that the insurer will pay a particular no-fault benefit pending resolution of any dispute between the insurer and an insured, the insurer shall pay the benefit until the dispute is resolved.

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Particulars of insurance

234.—(1) A person who is entitled to no-fault benefits or his or her personal representative is entitled to particulars as to whether the owner or operator of any automobile against

whom the person may have a claim has insurance that provides for no-fault benefits and the name of the insurer, if any.

(2) The person or his or her personal representative may demand the particulars described in subsection (1) by registered mail from the owner or operator of the automobile or the insurer, if any, of either of them. Demand for particulars

(3) Every owner, operator and insurer shall comply with a demand under subsection (2) within ten days of receiving the demand. Reply

58. Section 235 of the said Act is amended by striking out “232 or 233” in the second line and inserting in lieu thereof “or 232”.

59. Section 236 of the said Act is repealed.

60. Subsection 237 (1) of the said Act is amended by striking out “232 or 233” in the second line and inserting in lieu thereof “or 232”.

61. Section 238 of the said Act is repealed and the following substituted therefor:

238.—(1) Every proceeding against any insurer under a contract in respect of insurance provided under section 231 must be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than two years after the happening of the accident. Limitation of action

(2) Every proceeding against any insurer under a contract in respect of insurance provided under section 232 must be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than the period described in subsection 242c (5). Idem

62. Subsection 239 (2) of the said Act is repealed.

63. The said Act is further amended by adding thereto the following sections:

239a. Payments made or available to a person under the *No-Fault Benefits Schedule* constitute, to the extent of such payments, a release by the person, the person's personal representative, the person's insurer or any one claiming through or under the person or by virtue of Part V of the *Family Law Act, 1986* of any claim under subsection 231 (1) or 232 (1). Release
1986, c. 4

Indemnifi-
cation in
certain cases

239b.—(1) The insurer responsible under subsection 232 (2) for the payment of no-fault benefits to such classes of persons as may be named in the regulations is entitled, subject to such terms, conditions, provisions, exclusions and limits as may be prescribed, to indemnification in relation to such benefits paid by it from the insurers of such class or classes of automobiles as may be named in the regulations involved in the incident from which the responsibility to pay the no-fault benefits arose. ▲

Idem

(2) Indemnification under subsection (1) shall be made according to the respective degree of fault of each insurer's insured as determined under the fault determination rules.

Deductible

(3) No indemnity is available under subsection (2) in respect of the first \$2,000 of no-fault benefits paid in respect of a person described in that subsection. ▼

Arbitration

(4) If the insurers are unable to agree with respect to indemnification under this section, the dispute shall be resolved through arbitration under the *Arbitrations Act*.

R.S.O. 1980,
c. 25

Stay of
arbitration
proceedings

(5) No arbitration hearing shall be held with respect to indemnification under this section if there is an unsettled claim against any of the insurers by an insured in respect of the incident for which indemnification is sought. ▲

64.—(1) Subsection 241 (1) of the said Act is amended by inserting after “ownership” in the fourth line “or directly or indirectly with the”.

(2) Subsection 241 (2) of the said Act is amended by striking out “232 and 233” in the first line and inserting in lieu thereof “and 232”.

65. The said Act is further amended by adding thereto the following sections:


DISPUTE RESOLUTION—NO-FAULT BENEFITS

Dispute
resolution,
procedure to
be followed


242a.—(1) Disputes in respect of any insured person's entitlement to no-fault benefits or in respect of the amount of no-fault benefits to which an insured person is entitled shall be resolved in accordance with sections 242b to 242e and the *No-Fault Benefits Schedule*. ▼

No opting
out


(2) Any restriction on a party's right to mediate, litigate, arbitrate, appeal or apply to vary an order as provided in sections 242b to 242f is void except where the restriction forms part of a settlement.

(3) For the purposes of this section and sections 242b to 242f, “insured person” includes a person who is claiming funeral expenses or a death benefit under the *No-Fault Benefits Schedule*. 

Definition

(4) The Director and every arbitrator shall determine issues before them by order and may make an order subject to such conditions as are set out in the order. 

Orders

(5) If an insurer or an insured is represented in any mediation, arbitration, appeal or variation proceeding under sections 242b to 242f, the mediator, arbitrator or Director, as the case may be, may adjourn the proceeding, with or without conditions, if the representative is not authorized to bind the party he or she represents. 

Power to bind parties

242b.—(1) Either the insured person or the insurer may refer to a mediator any matter in dispute in respect of the insured person’s entitlement to no-fault benefits or in respect of the amount of no-fault benefits to which the insured person is entitled.

Mediation

(2) The party seeking mediation shall file an application for the appointment of a mediator with the Commission.

Starting the process

(3) The Director shall ensure that a mediator is appointed promptly.

Mediator’s appointment

(4) The mediator shall enquire into the issues in dispute and attempt to effect a settlement of as many of the issues as possible within the time prescribed in the regulations for the settlement of the type of dispute in question.


Mediation

(5) The parties may by agreement extend the time for the completion of the mediation process, even if the time for completion has expired.


Extension of time

(6) If at any time before a settlement is effected the mediator is of the opinion that mediation will fail, he or she shall forthwith notify the parties.

Notice of failure

(7) Mediation has failed when the mediator has given notice to the parties that in his or her opinion mediation will fail, or when the prescribed or agreed time for mediation has expired and no settlement has been reached. 

Idem

(8) If mediation fails, the mediator, in addition to any notice required to be given, shall prepare and give to the parties a report setting out the insurer’s last offer and the mediator’s description of the issues that remain in dispute. 

Idem

Litigation or
arbitration

242c.—(1) If mediation fails, the insured person may bring a proceeding in a court of competent jurisdiction or may refer the matter to an arbitrator.

Limitation

(2) No person may bring a proceeding in any court or refer a matter to arbitration unless mediation has first been sought and has failed.

Payment
pending
dispute
resolution

(3) Subject to subsection (4), if mediation fails, the insurer shall pay no-fault benefits in accordance with the last offer of settlement that it had made before the failure until otherwise agreed by the parties or until otherwise ordered by a court, an arbitrator or the Director.

Idem

(4) If a dispute involves a no-fault benefit that the insurer is required to pay under subsection 232 (8) and the insured has not commenced a proceeding in a court or an arbitration proceeding within forty-five days after the day mediation failed, the insurer shall pay the insured in accordance with the last offer made by the insurer before the failure until otherwise agreed by the parties or until otherwise ordered by a court, an arbitrator or the Director.

Limitation
period

(5) A proceeding in a court or an arbitration proceeding in respect of no-fault benefits must be commenced within two years after the insurer's refusal to pay the benefit claimed or within such longer period as may be provided in the *No-Fault Benefits Schedule*.

Arbitration,
starting the
process

242d.—(1) An insured person seeking arbitration shall file an application for the appointment of an arbitrator with the Commission.

Arbitrator's
appointment

(2) The Director shall ensure that an arbitrator is appointed promptly.

Settlement of
issues

(3) The arbitrator shall determine all issues in dispute and such other issues as the parties may agree.

Procedures

(4) The arbitration shall be conducted in accordance with the procedures and within the time-limits set out in the regulations.

Questions

(5) The Director, on the recommendation of an arbitrator, shall refer to the chair of the medical and rehabilitation advisory panel any question related to the medical condition or treatment of the insured person or related to the insured person's rehabilitation.

(6) The chair of the medical and rehabilitation advisory panel shall refer the question to one or more persons (referred to in this section as advisors) who he or she considers qualified to conduct a medical or rehabilitation assessment, as the case may be.

Advisors

(7) Advisors may advise and report to the arbitrator on any question before them on the basis of the evidence before the arbitrator and they may require the insured person to submit, at the expense of the insurer, to such medical or rehabilitation assessments as they may require.

Idem

(8) Reports prepared by advisors shall be delivered to the arbitrator and the parties.

Transmittal of reports

(9) Except with the permission of the insured person, no person shall use or provide copies of, or release information from, any report prepared by an advisor other than for the purpose of determining the claim in respect of which the arbitration was undertaken.

Use of reports

(10) If the arbitrator finds that an insurer has unreasonably withheld or delayed payments, the arbitrator, in addition to awarding the benefits and interest to which an insured person is entitled under the *No-Fault Benefits Schedule*, shall award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*.

Special award

(11) The arbitrator may award to the insured person such expenses incurred in respect of an arbitration proceeding as may be prescribed in the regulations to the maximum set out in the regulations.

Expenses

(12) A party may apply to the Director for the appointment of a new arbitrator if the party believes that the arbitrator is biased and the Director shall determine the issue.

Bias

(13) The arbitrator, forthwith upon making a decision in an arbitration, shall deliver a copy of his or her order together with the reasons therefor to the insured person, the insurer and the Director.

Copies of decision

(14) At the request of the insured person, the Director shall file a copy of the arbitrator's order in the Supreme Court and the order shall be entered and be enforceable in the same way as a judgment or order of the court.

Enforcement

Idem

(15) The method of enforcement set out in subsection (14) is in addition to any other method of enforcement set out in this Act.

Non-
application
of
R.S.O. 1980,
c. 25

(16) The *Arbitrations Act* does not apply to arbitrations under this section.

Appeal

242e.—(1) A party to an arbitration may appeal the order of the arbitrator to the Director.

Notice of
appeal

(2) A notice of appeal shall be in writing and shall be delivered to the Commission within thirty days after the date of the arbitrator's order and the appellant shall serve the notice on the respondent.

Extension of
time

(3) The Director may extend the time for requesting an appeal, either before or after the thirty days, if the Director is satisfied that there are apparent grounds for granting relief to the person and that there are reasonable grounds for applying for the extension, and the Director may give such directions as he or she considers proper consequent upon the extension.

Nature of
hearing

(4) The Director may determine the appeal on the record or by way of a rehearing of all the issues before the arbitrator or partly on the record and partly by way of rehearing as the Director in his or her opinion may decide.

Power of the
Director

(5) Upon hearing an appeal, the Director may confirm, vary or rescind the order appealed from or substitute his or her order for that of the arbitrator.

Order not
stayed

(6) An appeal does not stay the order of the arbitrator unless the Director decides otherwise.

Medical
reports,
special
awards,
expenses

(7) Subsections 242d (5) to (11) apply with necessary modifications to appeals before the Director.

Interventions

(8) The Director may permit persons who are not parties to the appeal to make submissions on issues of law arising in an appeal.

Enforcement

(9) At the request of the insured person, the Director shall file a copy of his or her order in an appeal under this section in the Supreme Court and the order shall be entered and be enforceable in the same way as a judgment or order of the court.

(10) The method of enforcement set out in subsection (9) is in addition to any other method of enforcement set out in this Act. Idem



242f.—(1) Either the insured person or the insurer may apply to the Director to vary or revoke an order made by an arbitrator or the Director. Application for variation

(2) If an application is made to vary or revoke an arbitrator's order, the Director may decide the matter or he or she may appoint the same arbitrator or some other arbitrator to determine it. Idem

(3) If the arbitrator or Director is satisfied that there has been a material change in the circumstances of the insured or that evidence not available on the arbitration or appeal has become available or that there is an error in the order, the arbitrator or Director may vary or revoke the order and may make a new order if he or she considers it advisable to do so. Powers on variation

(4) An order made, varied or revoked under subsection (3) may be prospective or retroactive. Idem

242g.—(1) The Director may state a case in writing for the opinion of the Divisional Court upon any question that, in his or her opinion, is a question of law. Stated case

(2) The Divisional Court shall hear and determine the stated case. Idem


242h. An arbitrator cannot vary or revoke an order made by him or her and cannot make a new order to replace an order made by him or her if the order is under appeal. When arbitrator cannot act

242i. An insurer shall not, after an order of the Director or of an arbitrator, reduce benefits to an insured person on the basis of an alleged change of circumstances, alleged new evidence or an alleged error, unless the insured person agrees or unless the Director or an arbitrator so orders in a variation or appeal proceeding under section 242e or 242f. Protection of benefits

242j. The Director shall review arbitration orders and may recommend to the Superintendent that the Superintendent investigate the business practices of an insurer if the Director is of the opinion that any arbitration or appeal from an arbitration reveals unfair or deceptive business practices. Finding of possible unfair or deceptive business practice

CHANGES TO NO-FAULT BENEFITS SCHEDULE

Reports to
the Assembly

242k. At least once every two years, the Minister shall table a report before the Assembly in respect of the adequacy of no-fault benefits and setting out changes made to the *No-Fault Benefits Schedule* since the last report and changes that are proposed to the *No-Fault Benefits Schedule* at the time of the report. 

66. Subsection 299 (4) of the said Act is repealed.

67. Subsection 303 (4) of the said Act is repealed and the following substituted therefor:

Exception

(4) This section is subject to any rules to the contrary certified by and filed with the Superintendent under this Part.

68. Subsection 308 (1) of the said Act is amended by striking out “prescribe” in the last line and inserting in lieu thereof “require”.

69.—(1) Subsection 309 (1) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 309 (2) of the said Act is repealed and the following substituted therefor:

Request by
Commissioner

(2) If, after considering the report, the Commissioner agrees with the Superintendent, the Commissioner shall require the society to make, within the specified time but not exceeding four years, such increase in its rates of contribution or such reduction in the benefits payable under its contracts of insurance or otherwise as will enable the society to provide for the payment of its contracts of insurance at maturity.

(3) Subsection 309 (4) of the said Act is amended by striking out “Minister” in the fourth line and inserting in lieu thereof “Commissioner”.

70. Section 310 of the said Act is amended by striking out “Minister” in the seventh line and inserting in lieu thereof “Commissioner”.

71. Subsection 311 (1) of the said Act is amended by striking out “Minister” in the second line and in the fourth line and inserting in lieu thereof in each instance “Commissioner”.

72. Subsection 322 (1) of the said Act is amended by striking out “Minister” in the tenth line and inserting in lieu thereof “Commissioner”.

73. Subsection 325 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

74. Sections 369 to 372 of the said Act are repealed and the following substituted therefor:

369.—(1) Every insurer shall apply to the Commissioner for approval of, Application re classes, rates

(a) the classes of risk exposure it intends to use in determining the rates for each coverage and category of automobile insurance; and

(b) the rates it intends to use for each coverage and category of automobile insurance.

(2) An insurer is not required to apply for approval of such classes of risk exposure as insurers may be required by regulation to use. Exception

(3) An application for approval of classes of risk exposure or rates shall be in a form approved by the Commissioner and shall be filed together with such information, material and evidence as the Commissioner may specify. Material to be furnished

(4) The Commissioner may require an applicant to provide such information, material and evidence as the Commissioner considers necessary in addition to the information, material and evidence required to be provided in or with the application. Additional information

(5) An application shall be deemed to have been approved by the Commissioner sixty days after it is filed unless the Commissioner within that sixty-day period advises the applicant orally or otherwise that he or she has not approved the application. Approval

(6) The Commissioner may approve the application before the expiry of the sixty-day period. Idem

(7) The Commissioner may extend the period for approval for a period not exceeding sixty days. Extension of time

(8) If the Commissioner notifies an applicant orally that he or she has not approved an application, the Commissioner Notice

shall promptly mail a written notice to the applicant confirming that fact.

Hearing

(9) If the Commissioner notifies an applicant that he or she has not approved an application, the Commissioner shall hold a hearing.

Hearing,
public
interest

(10) The Commissioner shall not approve an application if the Commissioner considers that it is in the public interest to hold a hearing on the application.

Refusal to
approve

(11) The Commissioner shall refuse to approve an application if the Commissioner considers that the proposed classes of risk exposure or rates are not just and reasonable in the circumstances.

Idem

(12) The Commissioner shall refuse to approve an application respecting proposed classes of risk exposure that the Commissioner considers,

(a) are not reasonably predictive of risk; or

(b) do not distinguish fairly between classes of risk exposure.

Idem

(13) The Commissioner shall refuse to approve an application respecting proposed rates that the Commissioner considers would impair the solvency of the applicant or are excessive in relation to the financial circumstances of the insurer.

Relevant
information

(14) In deciding upon an application, the Commissioner may take into account financial and other information and such other matters as may directly or indirectly affect the applicant's proposed rates or the applicant's ability to underwrite insurance for the proposed classes of risk exposure.

Powers of
the Commis-
sioner

(15) Following a hearing, the Commissioner may approve or refuse to approve the application or may vary the classes of risk exposure or the rates, and the approval may be subject to such conditions or restrictions as the Commissioner considers appropriate in the circumstances.

Definition

(16) In this section, "insurer" includes the Facility Association.

Exemptions
from
approval
process

370.—(1) The Commissioner may exempt insurers, other than the Facility Association, from making an application under section 369 in respect of designated categories or coverages of automobile insurance.

(2) An insurer shall file the classes of risk exposure and rates it intends to use for the exempted categories or coverages of automobile insurance in a form approved by the Commissioner. Filing

(3) An insurer may use the classes of risk exposure or rates filed under this section thirty days after filing them. Effective date

(4) If the Commissioner revokes an exemption, insurers are required to apply within thirty days after the revocation for approval under section 369 of the classes of risk exposure and rates it is using for the categories or coverages of automobile insurance affected by the revocation. Revocation of exemption

(5) An insurer may continue to use the classes of risk exposure and rates filed before the Commissioner revoked the exemption until the insurer's application under subsection (4) is determined. Idem

371.—(1) The Commissioner may require that affiliated insurers who write automobile insurance in Ontario file their applications under section 369 or 370 concurrently. Applications by affiliates

(2) The Commissioner may consider the classes of risk exposure and the rates of the affiliates of an insurer when deciding upon the insurer's application. Idem

(3) For the purpose of this section, an insurer is considered to be affiliated with another insurer if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person. Interpretation

372.—(1) Despite any approval or exemption under section 369 or 370, the Commissioner may, at any time, order a hearing with respect to any classes of risk exposure or rates for any coverage or category of automobile insurance of an insurer if the Commissioner is of the opinion that, Reconsideration

- (a) the classes of risk exposure or rates are not just and reasonable in the circumstances;
- (b) the classes of risk exposure are not reasonably predictive of risk or do not distinguish fairly between classes of risk exposure; or
- (c) the rates would impair the solvency of the insurer or are excessive in relation to the financial circumstances of the insurer.

- Variation (2) Following a hearing, the Commissioner may vary the classes of risk exposure the insurer may use or the rates it may charge.
- Deemed approval (3) For the purposes of section 372b, classes and rates varied under subsection (2) shall be deemed to be classes and rates approved by the Commissioner.
- Policy statements **372a.**—(1) The Minister may issue policy statements on matters related to coverages or categories of automobile insurance, classes of risk exposure and automobile insurance rates.
- When effective (2) A policy statement takes effect on the day it is published in *The Ontario Gazette*.
- Effect of statement (3) The Commissioner shall have regard to the policy statements issued under this section in making decisions under this Part.
- Prohibition, classes **372b.**—(1) No insurer shall use a class of risk exposure in determining a rate for a coverage or category of automobile insurance that is not approved by the Commissioner or authorized under section 370 or by regulation.
- Idem, rates (2) No insurer shall use a rate for a coverage or category of automobile insurance that is not approved by the Commissioner or authorized under section 370.
- Definition (3) In this section, “insurer” includes the Facility Association.
- Coming into force (4) This section comes into force on a day to be named by proclamation of the Lieutenant Governor.

75.—(1) Clause 388 (8) (g) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

(2) Subsection 388 (8a) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 8, section 8, is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

76.—(1) Clause 393 (a) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 70, section 32, is repealed and the following substituted therefor:

- (a) “person” includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society

known as Lloyd's, fraternal society, mutual benefit society or syndicate.

(2) Clause 393 (b) of the said Act is amended,

- (a) by striking out “in the business of insurance” in the first and second lines;**
- (b) by striking out “or” at the end of subclause (viii); and**
- (c) by striking out subclause (ix) and inserting in lieu thereof:**
 - (ix) any conduct resulting in unreasonable delay or resistance to the fair adjustment and settlement of claims,
 - (x) making the issuance or variation of a policy of automobile insurance conditional upon the purchase by the insured of another insurance policy,
 - (xi) when rating a person or a vehicle as an insurance risk for the purpose of determining the premium payable for a policy of automobile insurance, misclassifying the person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use, or
 - (xii) any activity or failure to act that is prescribed as an unfair or deceptive act or practice.

77. Section 394 of the said Act is repealed and the following substituted therefor:

394. No person shall engage in any unfair or deceptive act or practice. Prohibition

78. Sections 396 and 397 of the said Act are repealed and the following substituted therefor:

396.—(1) If, in the opinion of the Superintendent, a person is committing any act or pursuing any course of conduct that is an unfair or deceptive act or practice or might reasonably be expected to result in a state of affairs that would constitute an unfair or deceptive act or practice, the Superintendent may give notice to the person of the Superintendent's intention to order the person, Superintendent's orders

- (a) to cease or refrain from doing any act or pursuing any course of conduct identified by the Superintendent;
- (b) to cease engaging in the business of insurance or any aspect of the business of insurance specified by the Superintendent; or
- (c) to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

Hearing

(2) A person, by written notice served on the Superintendent within fifteen days after the service of the notice under subsection (1), may require a hearing before the Superintendent.

Interim order

(3) Notwithstanding subsection (2), where, in the opinion of the Superintendent, the interests of the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Superintendent, without prior notice, may make an interim order as described in clause (1) (a), (b) or (c) which shall take effect immediately on its making, and which shall become permanent on the fifteenth day after its making unless within that time a hearing before the Superintendent is requested.

When order
may be made

(4) If no hearing is requested within the time set out in subsection (2) or (3), or if a hearing is held and the Superintendent is of the opinion that an order described in clause (1) (a), (b) or (c) should be made, the Superintendent may make a permanent order under any of those clauses which shall take effect immediately on its making or at such later date as may be set out in the order.

Hearing

(5) A request for a hearing under subsection (3) shall be in writing and served on the Superintendent.

Extension of
order

(6) If a hearing is requested under subsection (3), the Superintendent may extend the temporary order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

Modification
or revocation

(7) The Superintendent may, after giving the person named in the order an opportunity to be heard, modify or, without holding a hearing, revoke an order made under this section.

79. The said Act is further amended by adding thereto the following Part:

PART XX

EXAMINATION AND ENFORCEMENT

407. In this Part, “examination” means examination, inquiry, appraisal, audit or inspection under this Act.

Definition

408.—(1) It is a condition of the licensing of a person that the person facilitate examinations.

Examinations, general

(2) For the purpose of an examination, the insurer, agent or adjuster shall prepare and submit to the person conducting the examination such statements or returns with respect to the insurer’s, agent’s or adjuster’s business, finances or other affairs, in addition to the statements or returns mentioned in this Act, as the Superintendent may require.

Material to be furnished

(3) The officers, agents and employees of an insurer, agent or adjuster shall open the books for inspection and shall otherwise facilitate an examination under this Act so far as it is in their power.

Duty of officers, etc.

(4) In order to facilitate an examination of the books and records of an insurer, agent or adjuster, the Superintendent or a person designated by the Commissioner may require the insurer, agent or adjuster to produce the books and records at his, her or its principal place of business in Ontario, or at such other convenient place as the Superintendent may direct.

Production of books

(5) On the direction of the Superintendent or a person designated by the Commissioner, if an examination of an insurer is made at an office situate outside Ontario, the insurer shall pay the costs and expenses of the examination.

Expense of further examination

409.—(1) A person conducting an examination, for the purpose of carrying out that person’s duties,

Powers of examination, etc.

- (a) may enter any place at any reasonable time;
- (b) may require the production for inspection of documents or things that may be relevant to the carrying out of the duties;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall return them within a reasonable time to the person who produced them; and

- (d) may question a person on matters that are or may be relevant to the carrying out of the examination.

Entry to
dwellings

(2) No person may exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Warrant for
search

(3) Where a justice of the peace is satisfied on information upon oath that there are in a place documents or things that there are reasonable grounds to believe will afford evidence relevant to the carrying out of an examination under this Act, the justice of the peace may issue a warrant authorizing the person named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for
entry

(4) Where a justice of the peace is satisfied on information upon oath that there are reasonable grounds to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a person may carry out an examination, the justice of the peace may issue a warrant authorizing such entry by the person named in the warrant.

Execution
and expiry of
warrant

(5) A warrant issued under subsection (3) or (4),

- (a) shall specify the hours and days during which it may be executed; and
- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(6) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede a person carrying out an examination.

Idem

(7) Subsection (6) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (3).

Admissibility
of copies

(8) Copies of, or extracts from, documents and things removed from premises under this Act and certified by the person who made the copies as being true copies of, or extracts from, the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

410.—(1) An auditor shall promptly report to the insurer and to the Superintendent any breach of this Act of which the auditor is aware or is made aware under subsection (2) and, if the insurer does not act to rectify the breach within thirty days, the auditor shall promptly report the failure to rectify to the Superintendent.

Reporting by auditor

(2) Any person undertaking professional services for an insurer who, in providing the professional services, becomes aware of a breach of this Act shall promptly report the breach to the insurer and the auditor of the insurer or, if there is no auditor, to the Superintendent.

Reporting by others

(3) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client.

Solicitor-client privilege

411. A person who in good faith makes an oral or written statement or disclosure to the Commissioner, the Superintendent, an employee of the Commission or any other person acting under the authority of this Act that is relevant to the duties of the person to whom the statement or disclosure is made shall not be liable in any civil action arising out of the making of the statement or disclosure.

No liability

412.—(1) In this section, "person" includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society known as Lloyd's, fraternal society, mutual benefit society or syndicate.

Definition

(2) Every person is guilty of an offence who,

Offences

- (a) directly or indirectly furnishes false, misleading or incomplete information to the Commission whether the information is required under this Act or is volunteered;
- (b) fails to comply with any requirement of, or any order or direction made under, this Act;
- (c) fails to comply with any written undertaking given to the Commissioner or the Superintendent;
- (d) contravenes this Act or the regulations; or
- (e) contravenes any term, condition or restriction imposed by a licence.

(3) On conviction for an offence under this Act, the person convicted is liable on a first conviction to a fine of not more

Penalty

than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000.

Derivative

(4) Every director, officer and chief agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association who,

- (a) caused, authorized, permitted or participated in the corporation or unincorporated association committing an offence referred to in subsection (2); or
- (b) failed to take reasonable care to prevent the corporation or unincorporated association from committing an offence referred to in subsection (2),

is guilty of an offence and is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000, whether or not the corporation or unincorporated association has been prosecuted for or convicted of the offence.

Restitution

(5) Where a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

Order for compliance

413.—(1) If it appears to the Superintendent that any person has failed to comply with or is not complying with,

- (a) any order, decision, direction or inquiry made under this Act;
- (b) any undertaking given; or
- (c) any term, condition or restriction imposed on its licence, where applicable,

the Superintendent may, in addition to any other rights under this Act, apply to a judge of the High Court for an order directing the person to comply with or restraining the person from violating the order, decision, direction, inquiry, undertaking, term, condition or restriction, and the judge may make such order as the judge considers appropriate.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1).

Limitation period

414. No proceeding for an offence under this Act may be commenced more than two years after the earlier of the date

on which the facts upon which the proceedings are based first came to the knowledge of the Commissioner or the Superintendent.

80. Schedule C to the said Act is repealed.

81. The *Automobile Insurance Rates Control Act, 1989*, being chapter 34, is repealed.

82.—(1) Subclause 1 (c) (ii) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(ii) provides the no-fault benefits set out in the *No-Fault Benefits Schedule* under the *Insurance Act*.

R.S.O. 1980,
c. 218

(2) Section 1 of the said Act is amended by adding thereto the following clause:

(ca) “Commissioner” means the commissioner of insurance under the *Insurance Act*.

R.S.O. 1980,
c. 218

(3) Clause 1 (n) of the said Act is repealed.

(4) Section 1 of the said Act is amended by adding thereto the following subsections:

(2) An electric streetcar that runs on rails principally on a highway shall be deemed to be a motor vehicle for the purposes of this Act.

Streetcars

(3) Notwithstanding that a motor vehicle is insured under a contract of automobile insurance, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the *Insurance Act* with respect to that contract unless the excluded driver is a named insured under another contract of automobile insurance.

Exception re:
excluded
driver

R.S.O. 1980,
c. 218

(5) The said Act is amended by striking out “Superintendent” wherever it occurs and inserting in lieu thereof in each instance “Commissioner”.

(6) Section 3 of the said Act is amended by adding thereto the following subsection:

(1a) Despite subsection (1), an operator of a motor vehicle who is named as an excluded driver under the contract of

Excluded
driver to
carry
insurance
card

automobile insurance under which the vehicle is insured shall have in the vehicle at all times an insurance card evidencing that the operator is a named insured under another contract of automobile insurance, and the operator shall surrender the insurance card for reasonable inspection upon the demand of a police officer.

(7) Subsection 3 (2) of the said Act is amended by striking out “subsection (1)” in the first line and inserting in lieu thereof “this section”.

(8) Subsection 10 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 18, section 32, is repealed and the following substituted therefor:

Idem

(4) Rates prepared under subsection (3) do not come into effect until approved under section 369 of the *Insurance Act*.

83. Section 66 of the *Corporations Tax Act*, being chapter 97 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Exception

R.S.O. 1980,
c. 218

(1a) Clause (1) (b) does not apply in respect of a contract of automobile insurance within the meaning of the *Insurance Act* unless the automobile insured by the policy is,

- (a) an ambulance or funeral vehicle;
- (b) a bus, limousine or taxi or other vehicle that carries passengers for reward or as part of a transportation service;
- (c) a fire department or police vehicle;
- (d) a driver training vehicle;
- (e) a vehicle rented for a period of less than thirty days;
- (f) a vehicle used primarily to transport things in connection with the insured's business or occupation;
or
- (g) a vehicle that weighs more than 4,500 kilograms.

84. Clause 1 (1) (t) of the *Credit Unions and Caisses Populaires Act*, being chapter 102 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (t) "Superintendent" means the Superintendent of Deposit Institutions.

85. Section 36 of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

(4) Despite subsection (1), the Plan is not subrogated to the rights of an insured person in respect of personal injuries arising directly or indirectly from the use or operation of an automobile after this section comes into force in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* under the *Insurance Act*.

Exception

R.S.O. 1980,
c. 218

86.—(1) Section 1 of the *Motor Vehicle Accident Claims Act*, being chapter 298 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 12, section 1, is further amended by adding thereto the following subsection:

(1a) Notwithstanding that a motor vehicle is insured under a motor vehicle liability policy, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the *Insurance Act* with respect to that policy unless the excluded driver is a named insured under another motor vehicle liability policy.

Exception re:
excluded
driver

R.S.O. 1980,
c. 218

(2) The said Act is amended by adding thereto the following section:

4b.—(1) Any person who has recourse against the Fund for no-fault benefits under section 232 of the *Insurance Act* may make application, in a form prescribed by the Minister, for payment out of the Fund of the benefits.

No-fault
benefits

(2) If a person has recourse against the Fund under section 232 of the *Insurance Act*,

Idem


R.S.O. 1980,
c. 218

- (a) a reference to an insurer in the *No-Fault Benefits Schedule* shall be deemed to be a reference to the Fund and a reference to an insured person shall be deemed to be a reference to the person who has recourse against the Fund; and
- (b) sections 238, 239a and 242a to 242i of the *Insurance Act* apply with necessary modifications.

(3) The Minister shall make payment out of the Fund of the amounts owing to a person described in subsection (2).

Idem

Idem

(4) Subsection 21 (9) does not apply to payments under this section. 

87. Section 10 of the *Motorized Snow Vehicles Act*, being chapter 301 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Application
of
R.S.O. 1980,
c. 198, 298

10. The *Highway Traffic Act*, except Part XI, and the *Motor Vehicle Accident Claims Act*, except section 4b, do not apply to a motorized snow vehicle or to the driving thereof.

88. The *Ontario Automobile Insurance Board Act, 1988*, being chapter 18, is repealed.

89.—(1) Section 1 of the *Prepaid Hospital and Medical Services Act*, being chapter 388 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

R.S.O. 1980,
c. 218

(aa) “Commissioner” means the commissioner of insurance under the *Insurance Act*.

(2) Section 12 of the said Act is repealed and the following substituted therefor:

Appeal

12. An association that considers itself aggrieved by a decision of the Superintendent may appeal the decision to the Commissioner in accordance with the procedures set out in the *Insurance Act*.

R.S.O. 1980,
c. 218

90.—(1) Section 1 of the *Registered Insurance Brokers Act*, being chapter 444 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

R.S.O. 1980,
c. 218

(ca) “Commissioner” means the commissioner of insurance under the *Insurance Act*.

(2) Section 9 of the said Act is repealed and the following substituted therefor:

Ontario
Insurance
Commission
R.S.O. 1980,
c. 218


9.—(1) The Ontario Insurance Commission established under the *Insurance Act* shall be deemed to have an interest in the Corporation, as the representative of all persons who may be served by registered insurance brokers.

Information

(2) The Corporation shall, within a reasonable time, furnish the Commissioner or the Superintendent, as the case may be, with such information and financial statements with respect to the Corporation as he or she may require.


(3) Subsection 10 (1) of the said Act is amended,

- (a) by striking out “the Minister and the Superintendent” in the second and third lines and inserting in lieu thereof “and the Minister”; and
- (b) by striking out “or Superintendent” in the last line.

 **91.**—(1) The filings made by an insurer with the Ontario Automobile Insurance Board under Ontario Regulations 697/89, 110/90 and 111/90 shall together be deemed to constitute the insurer’s first application under section 369 of the *Insurance Act*, as re-enacted by this Act.

Transitional

R.S.O. 1980,
c. 218

(2) An application referred to in subsection (1) shall be deemed to have been made on the date that section 74 comes into force. 

Idem

92. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-
ment

93. The short title of this Act is the *Insurance Statute Law Amendment Act, 1990*.

Short title

Bill 68

An Act to amend certain Acts respecting Insurance

The Hon. M. Elston
Minister of Financial Institutions



1st Reading October 23rd, 1989
2nd Reading December 5th, 1989
3rd Reading
Royal Assent

(Reprinted as amended by the General Government Committee)

EXPLANATORY NOTES

The purposes of the Bill are,

- (a) to establish the Ontario Insurance Commission;
- (b) to provide for a no-fault benefits scheme to replace the current Schedule C;
- (c) as part of the regulation of automobile insurance, to establish a new dispute resolution system for resolving disputes related to no-fault benefits;
- (d) to provide for direct compensation from an insured's own insurer for property damage caused by third persons;
- (e) to provide an incentive for persons to obtain insurance;
- (f) to strengthen the regulatory system governing insurers in Ontario;
- (g) to augment the means of enforcing the *Insurance Act*;
- (h) to increase consumer protection respecting automobile insurance;
- (i) to eliminate the corporations tax payable in respect of insurance for private passenger automobiles;
- (j) to permit the naming of persons as "excluded drivers" under contracts of automobile insurance;
- (k) to improve the collection of statistical data;
- (l) to update several administrative provisions of the *Insurance Act*.

The principal provisions of the Bill are as follows:

SECTIONS 1 to 4, 8, 12, 13, 16 to 29, 33 to 35, 38, 41, 43, 69 to 75, 81, 82 and 88 to 91. The Ontario Insurance Commission is established as the new regulator of the insurance industry. The Commission will be headed by the Commissioner of Insurance who will have, among his or her powers, the power to approve automobile insurance rates. He or she will also be responsible for appeals from decisions of the Superintendent. The Superintendent of Insurance and the Director of Arbitrations will also be members of the Commission. Complementary amendments are made to other Acts.

SECTIONS 15, 37, 39, 44 to 46, 48 to 51, 54, 56 to 64, 80, 82, 83 and 85 to 87. Provision is made for a new no-fault scheme to replace the existing Schedule C. Access to traditional tort remedies will be restricted to cases of death and cases of permanent serious disfigurement or impairment. The legal concept known as the "collateral source rule" is eliminated. Complementary amendments are made to other Acts.

SECTIONS 3, 37 and 65. Disputes over entitlement to no-fault benefits will be resolved under a new dispute resolution system. Under this system, disputes will first be referred by either the insurer or the insured person to compulsory mediation. If mediation fails, an insured person will have the option of proceeding by way of arbitration or litigation to resolve the claim.

SECTIONS 1, 3, 5 to 10, 14, 36, 37, 66, 67, 68 and 84. Among the administrative changes made in order to update the *Insurance Act* are the appointment and powers of the Superintendent, the protection of Crown employees from liability in civil proceedings, and record-keeping requirements for the Superintendent. Changes to the regulation-making powers of the Lieutenant Governor in Council are complementary to other amendments to the Act.

SECTIONS 3, 10, 12, 37 and 79. Comprehensive powers to enforce the *Insurance Act* are consolidated in a new Part XX of the Act. An offence is created respecting the obstruction of examinations made under the Act. Increased penalties are provided, and the limitation period for legal proceedings under the Act is extended.

SECTIONS 6, 7 and 10. Among the administrative provisions made in order to streamline enforcement of the *Insurance Act* are authorization to the Commission to issue certificates that may be used in evidence in legal proceedings, and provisions governing service of documents.

SECTIONS 10, 30 to 32, 78 and 79. The regulatory system is strengthened. The Superintendent is empowered to collect information from insurers through annual and interim returns filed by insurers, to make specific inquiries to, and periodically to examine the condition of affairs of, insurers. The powers of persons conducting examinations under the Act are set out. The duty to furnish information is clarified. The Superintendent may issue compliance orders.

SECTIONS 11, 41, 42, 45, 47, 76 and 77. Consumer protection measures respecting automobile insurance are augmented. The Commission is authorized to publish information about insurers that is in the public interest. Insurers are required to supply prescribed information to applicants for insurance and to insured persons. The category of "unfair acts and practices" by insurers is expanded.

SECTION 55. Insureds will collect damages from their own insurers for property damage caused by third persons. They will also be required to provide their insurer with details of any accident which must be reported under the *Highway Traffic Act*. This will improve the collection of statistical data by insurers.

SECTION 56. Under the proposed subsection 231 (5a) of the Act, uninsured motorists will be unable to recover for property damage. This will encourage compliance with the *Compulsory Automobile Insurance Act* and other statutes which require insurance.

SECTION 83. The tax payable under subsection 66 (1) of the *Corporations Tax Act* in respect of insurance for private passenger automobiles is eliminated.

SECTIONS 39, 40, 48, 49, 52, 53, 56, 82 and 86. Provision is made for an endorsement to a contract of automobile insurance naming an "excluded driver". If an excluded driver drives an automobile that is otherwise insured under the contract, the automobile is no longer insured, and persons otherwise insured under the contract are no longer insured, although they are entitled to medical and accident benefits under the *No-Fault Benefits Schedule*. Complementary amendments are made to other Acts.

Bill 68

1989

An Act to amend certain Acts respecting Insurance

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 67, section 1, is further amended by adding thereto the following paragraph:

2a. “accountant” means a person who is licensed under the *Public Accountancy Act*.

R.S.O. 1980,
c. 405

(2) Paragraph 7 of section 1 of the said Act is repealed.

(3) Section 1 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 1, is further amended by renumbering paragraph 13a as paragraph 13d and by adding thereto the following paragraphs:

13a. “class of risk exposure”, in relation to automobile insurance, includes all rules, procedures and factors used to determine the rates for each coverage and category of automobile insurance;

13b. “Commission” means the Ontario Insurance Commission;

13c. “Commissioner” means the commissioner of insurance appointed under section 3;

.

15a. “Director” means the director of arbitrations appointed under section 6;

.

56a. "rate", in relation to automobile insurance, means all amounts payable under contracts of automobile insurance for an identified risk exposure whether expressed in dollar terms or in some other manner and includes commissions, surcharges, fees, discounts, rebates and dividends.

(4) Paragraph 39 of section 1 of the said Act is repealed and the following substituted therefor:

39. "Minister" means the Minister of Financial Institutions.

(5) Paragraph 62 of section 1 of the said Act is repealed and the following substituted therefor:

62. "Superintendent" means the superintendent of insurance appointed under section 4.

2. The heading to Part I of the said Act is repealed and the following substituted therefor:

PART I

ONTARIO INSURANCE COMMISSION

ORGANIZATION

3. Sections 2, 3, 4, 5 and 6 of the said Act are repealed and the following substituted therefor:

Commission
established

2.—(1) A commission to be known as the Ontario Insurance Commission is established.

Composition
of
Commission

(2) The Commission shall be composed of the Commissioner, the Superintendent and the Director.

Duties

(3) It is the duty of the Commission to administer and enforce this Act and to supervise generally, and make recommendations to the Minister in respect of, the business of insurance in Ontario.

Powers

(4) The Commission may exercise such powers as are necessary to carry out its functions under this Act.

Commis-
sioner

3.—(1) The Lieutenant Governor in Council shall appoint a commissioner of insurance who shall carry out the duties and exercise the powers of the Commissioner under this Act and every other Act that assigns duties to or confers powers on the Commissioner.

(2) The Commissioner is the chief executive officer of the Commission. Idem

(3) If the Commissioner is absent or if there is a vacancy in the office of the Commissioner, such person as may be designated by the Commissioner shall act as and have all the powers of the Commissioner. Acting Commissioner

(4) The Commissioner may delegate in writing any of his or her powers or duties to an employee of the Commission, subject to any limitation or condition set out in the delegation. Delegation

(5) The Commissioner may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Commissioner relating to such hearings. Idem

4.—(1) The Lieutenant Governor in Council shall appoint a superintendent of insurance who shall carry out the duties and exercise the powers of the Superintendent under this Act and every other Act that assigns duties to or confers powers on the Superintendent. Superintendent

(2) The Superintendent is the chief administrative officer of the Commission and shall carry out such duties respecting the administration and enforcement of this Act as may be assigned by the Commissioner. Idem

(3) If the Superintendent is absent or if there is a vacancy in the office of the Superintendent, such person as may be designated by the Superintendent shall act as and have all the powers of the Superintendent. Acting Superintendent

(4) The Superintendent may delegate in writing any of his or her powers or duties, including duties assigned to the Superintendent by the Commissioner, to an employee of the Commission, subject to any limitation or condition set out in the delegation. Delegation

(5) The Superintendent may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Superintendent relating to such hearings. Idem

5.—(1) Such employees as are required for the purposes of the Commission may be appointed under the *Public Service Act*. Staff
R.S.O. 1980,
c. 418

(2) The Commission may engage persons, other than those appointed under subsection (1), to provide professional, tech- Professional assistance

nical or other assistance to the Commission and may establish the duties and terms of engagement and provide for the payment of the remuneration and expenses of such persons.

Director of
arbitrations

6.—(1) The Lieutenant Governor in Council shall appoint a director of arbitrations who shall carry out the duties and exercise the powers of the Director under this Act.

Acting
Director

(2) If the Director is absent or if there is a vacancy in the office of Director, such person as may be designated by the Director shall act as and have all the powers of the Director.

Delegation

(3) The Director may delegate in writing any of his or her powers or duties to an employee of the Commission, subject to any limitation or condition set out in the delegation.

Idem

(4) The Director may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Director relating to such hearings.

Accident
benefits
advisory
committee

6a. The Minister shall appoint an accident benefits advisory committee to make recommendations concerning persons qualified to be arbitrators, to advise the Commission concerning procedures to be used during arbitrations and to advise on such other matters as the Commission or the Minister may refer to the committee.

Arbitrators

6b.—(1) The Commissioner shall establish and maintain a roster of candidates chosen by him or her from the persons recommended by the accident benefits advisory committee to conduct arbitrations under this Act.

Appointment

(2) The Director shall appoint arbitrators only from the roster of candidates.

Mediators

6c. The Commissioner may appoint employees of the Commission or other persons to act as mediators.

Medical, etc.,
advisory
panel

6d.—(1) The Commissioner shall appoint a medical and rehabilitation advisory panel to assist and advise the Director and arbitrators under this Act.

Appointment

(2) The panel shall consist of medical practitioners who are qualified to conduct medical assessments and other persons who are qualified to conduct rehabilitation assessments.

Chair

(3) The Commissioner shall designate a member of the panel to be its chair.

6e.—(1) No action or other proceeding for damages shall be instituted against any person acting under the authority of this Act or any Act listed in the Schedule to this subsection for any act done in good faith in the performance or intended performance of the person's duty or in the exercise or intended exercise of the person's powers or for any alleged neglect or default in the performance or execution in good faith of the person's duties or powers. Immunity

SCHEDULE TO SUBSECTION (1)

- | | | |
|----|---|------------------------|
| 1. | <i>Compulsory Automobile Insurance Act.</i> | R.S.O. 1980,
c. 83 |
| 2. | <i>Motor Vehicle Accident Claims Act.</i> | R.S.O. 1980,
c. 298 |
| 3. | <i>Prepaid Hospital and Medical Services Act.</i> | R.S.O. 1980,
c. 388 |
| 4. | <i>Registered Insurance Brokers Act.</i> | R.S.O. 1980,
c. 444 |

(2) Notwithstanding subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject. Crown
liability
R.S.O. 1980,
c. 393

(3) Except with the consent of the Commissioner, no person mentioned in subsection (1), other than the Commissioner, shall be required to testify in a civil proceeding, in a proceeding before the Commissioner or in a proceeding before any other tribunal respecting information obtained in the discharge of his or her duties under this Act or any Act listed in the Schedule to subsection (1). Testimony in
civil
proceedings

(4) Except with the consent of the Minister, the Commissioner shall not be required to testify in a civil proceeding or in a proceeding before any tribunal respecting information obtained in the discharge of his or her duties under this Act or any Act listed in the Schedule to subsection (1). Idem

6f. The Commissioner, the Superintendent, the Director and the employees of the Commission shall not be interested, directly or indirectly, other than as a policyholder, in any insurer, agent, adjuster or broker doing business in Ontario. Independence
of Commis-
sioner and
others

6g.—(1) The Commissioner shall at the close of each fiscal year file with the Minister an annual report upon the affairs of the Commission. Annual
report

Further
reports

(2) The Commissioner shall make such further reports and provide the Minister with such information as the Minister from time to time requires.

Tabling of
reports

(3) The Minister shall submit the reports to the Lieutenant Governor in Council and lay them before the Legislative Assembly if it is in session or, if not, at the next session.

Assessment
of insurers

6h.—(1) The Lieutenant Governor in Council may assess all insurers with respect to all expenses incurred and expenditures made by the Commission in the conduct of its affairs and an insurer shall pay the amount assessed against it.

Idem

(2) If an assessment is made under subsection (1), the share of a particular insurer shall be determined in the manner prescribed by regulation.

DECISIONS, HEARINGS AND APPEALS

Orders

6i.—(1) The Commissioner shall determine matters before him or her by order and may make an order subject to such conditions as are set out in the order.

Interim
orders

(2) The Commissioner may make interim orders pending the final order in a matter before him or her.

Proceedings
before the
Commissioner

6j.—(1) For a proceeding before the Commissioner, the Commissioner may,

- (a) make rules for the practice and procedure to be observed;
- (b) determine what constitutes adequate public notice;
- (c) before or during the proceeding, conduct any inquiry or inspection the Commissioner considers necessary;
- (d) in determining any matter, consider any relevant information obtained by the Commission in addition to evidence given at the proceeding, if he or she first informs the parties to the proceedings of the additional information and gives them an opportunity to explain or refute it.

Costs

(2) The costs of and incidental to a proceeding before the Commissioner are in his or her discretion and may be fixed in any case at a sum certain or may be assessed.

Idem

(3) In awarding costs, the Commissioner is not limited to the considerations that govern the award of costs in any court.

(4) The Commissioner may order by whom and to whom any costs are to be paid and by whom they are to be assessed and allowed. Idem

(5) The Commissioner may establish a scale under which such costs shall be assessed. Idem

(6) Costs awarded under this section may include the costs of the Commission, regard being had to the time and expenses of the Commission. Idem

6k.—(1) The Commissioner or the Superintendent, as the case may be, may reconsider and vary or revoke a decision or order made by him or her if he or she considers it advisable to do so. Variation of decisions

(2) The Commissioner or the Superintendent, as the case may be, is not required to hold a hearing when reconsidering his or her decision, but he or she shall allow the parties to make written submissions. No hearing

6l.—(1) A person affected by a decision of the Superintendent may appeal the decision to the Commissioner. Appeal from Superintendent's decision

(2) A request for an appeal shall be in writing and shall be delivered to the Commission within thirty days after the date of the Superintendent's decision. Request for appeal

(3) The Commissioner shall hold a hearing of an appeal. Hearing

(4) The parties to an appeal are the person who requests the appeal, the Superintendent and such other persons as the Commissioner may specify. Parties

(5) Upon hearing an appeal, the Commissioner may confirm, vary or rescind the decision appealed from or substitute his or her decision for that of the Superintendent. Power of the Commissioner

6m.—(1) The Lieutenant Governor in Council may require the Commissioner to examine and report on any question related to insurance that, in the opinion of the Lieutenant Governor in Council, requires a public hearing. Reference hearings

(2) The Commissioner shall determine who may be a party to a reference hearing. Parties

6n.—(1) This section applies with respect to proceedings under this Act before the Commissioner, the Superintendent and the Director and before an arbitrator. Exclusive jurisdiction

Idem

(2) A person referred to in subsection (1) has exclusive jurisdiction to exercise the powers conferred upon him or her under this Act and to determine all questions of fact or law that arise in any proceeding before him or her and, unless an appeal is provided under this Act, his or her decision thereon is final and conclusive for all purposes.

Decisions,
etc., not
stayed

(3) An application for judicial review and any appeal from an order of the court on the application does not stay the decision made under this Act.

Court may
grant stay

(4) Notwithstanding subsection (3), a judge of the court to which the application is made or a subsequent appeal is taken may grant a stay until the disposition of the judicial review or appeal.

Power to
summon
witnesses,
etc.

60.—(1) For the purpose of exercising the powers and performing their duties under this or any other Act, the Commissioner, the Superintendent, the Director and every arbitrator has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions.

Power to
require
evidence

(2) A person referred to in subsection (1) may require to be made or may take and receive affidavits or depositions and may examine witnesses upon oath.

Employment
of stenog-
rapher

(3) The evidence and proceedings in any matter before a person referred to in subsection (1) may be reported by a stenographer who has taken an oath before the person to report the evidence and proceedings faithfully.

Oaths

(4) A person referred to in subsection (1) may administer and certify an oath required under this Act.

4. The said Act is amended by inserting before section 7 the following heading:

ADMINISTRATION

5. The said Act is further amended by adding thereto the following section:

Records

7a. Records required under this Act to be prepared and maintained by the Commissioner or the Superintendent may be in bound or loose-leaf form or in photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage

device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time.

6. Subsections 8 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) The Commission may issue a certificate,

Certificates

- (a) stating that on a stated day a person was or was not licensed under this Act, or that the licence was renewed, suspended, revived, revoked or cancelled on a stated day;
- (b) stating that a copy of, or extract from, a document or thing in the custody of the Commission is a true copy of, or extract from, the original;
- (c) stating the amount payable to the Treasurer of Ontario under subsection 14 (3) or (4);
- (d) stating the amount payable for an audit under subsection 80 (4);
- (e) stating whether a document was served or delivered under this Act;
- (f) stating whether any document required under this Act was filed;
- (g) stating whether a document or notification was received or issued by the Commissioner, the Superintendent, the Director, an arbitrator or a mediator under this Act;
- (h) giving particulars of the custody of any book, record, document or thing;
- (i) stating when the facts upon which a proceeding for an offence are based first came to the knowledge of the Commissioner or the Superintendent.

(3) The Commissioner or the Superintendent may sign certificates on behalf of the Commission.

Idem

7. The said Act is further amended by adding thereto the following section:

8a.—(1) In this section, “official document” means a certificate, licence, order, decision, direction, inquiry or notice under this Act.

Official documents as evidence

Idem

(2) An official document that purports to be signed on behalf of the Commission shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or the position of the person appearing to have signed the official document.

True copies
as evidence

(3) A true copy certified by the Commission under clause 8 (2) (b) is admissible in evidence to the same extent as and has the same evidentiary value as the document or thing of which it is a copy.

8. Section 9 of the said Act is repealed and the following substituted therefor:

Right to a
licence

9. It is the duty of the Superintendent to determine the right of an insurer in Ontario to be licensed under this Act but nothing in this section affects the right of the Lieutenant Governor in Council or the Commissioner to suspend or cancel any licence in the exercise of his or her authority under this Act.

9. Subsection 10 (3) of the said Act is repealed.

10. Sections 11, 12, 13, 14 and 15 of the said Act are repealed and the following substituted therefor:

Inquiries

11. The Superintendent or a person designated by the Commissioner may direct to an insurer any inquiry related to the contracts, financial affairs or the acts and practices of the insurer, and the insurer shall answer promptly, explicitly and completely.

Right of
access

12. The Superintendent or a person designated by the Commissioner may at any reasonable time examine the books, securities, documents and things related to the business of an insurer, agent, adjuster or broker.

Duty to
furnish
information

13.—(1) Persons who are licensed under this Act, officers and agents of an insurer and the chief agent of an insurer that has its head office outside Ontario shall, on request, furnish the Superintendent or a person designated by the Commissioner with full information,

- (a) relating to any contract of insurance issued by an insurer;
- (b) relating to any settlement or adjustment under a contract of insurance; or

- (c) respecting any activities related to the business of insurance.

(2) An insured person shall, on request, furnish the Superintendent or person designated by the Commissioner with full information relating to any contract of insurance issued to the insured person or to any settlement or adjustment affecting the insured person under a contract of insurance. Idem

14.—(1) Once each year or more frequently as the Superintendent may consider appropriate for all insurers or for a particular insurer, the Superintendent or a person appointed by the Superintendent, Examination of insurers

- (a) shall examine an insurer's statement made under section 81;
- (b) may make such inquiries as are necessary to ascertain the insurer's condition and ability to meet its obligations as and when they become due; and
- (c) may make such inquiries as are necessary to ascertain whether the insurer has complied with the requirements of this Act applicable to its transactions.

(2) Subsection (1) does not apply so as to require an examination of an insurer, Exception

- (a) that is a mutual benefit society with fewer than 300 members; or
- (b) in respect of which the Superintendent adopts an examination by another government.

(3) The Superintendent may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets and liabilities of an insurer and the insurer shall pay the Treasurer of Ontario for the cost of the preparation of the abstracts or the valuation upon receiving a certificate of the Commission stating the amount payable. Preparation of abstracts, valuation

(4) Where the office of an insurer at which an examination is made under this section is outside Ontario, the insurer shall pay the Treasurer of Ontario for the cost of the examination upon receiving a certificate of the Commission stating the amount payable. Expenses of examination

Service of
documents

15.—(1) Service of any document for any purpose of this Act, where the method is not otherwise specified, may be made,

- (a) on any person, by personal service on the person to be served;
- (b) on an insurer, by first class registered mail addressed to the insurer or its chief executive officer at the insurer's head office in Ontario as identified in the records of the Superintendent;
- (c) on a person who is not an insurer, by first class registered mail addressed to the person's last known address;
- (d) on any person, by leaving a copy of the document with the solicitor, if any, of the person to be served, or with an employee in the solicitor's office; or
- (e) on any person, by telephone transmission of a facsimile of the document in accordance with subsection (7).

Service at
place of
residence

(2) Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

- (a) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and
- (b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.

Effective
date of
service

(3) Service at a person's place of residence under subsection (2) is effective on the fifth day after the document is mailed.

Requirements
for service by
mail

(4) Service by first class registered mail is not effective unless a post office receipt for the mail bearing a signature that purports to be the signature of the person to be served or of an officer of an insurer is received by the sender.

Effective
date of
service by
mail

(5) Service by first class registered mail is effective on the date on which the sender of the mail receives the receipt described in subsection (4).

(6) Service on a solicitor is not effective unless the solicitor endorses on the document or a copy of it an acceptance of service on behalf of his or her client and the date of the acceptance.

Acceptance
of service by
a solicitor

(7) A document that is served by telephone transmission shall include a cover page indicating,

Requirements
for service by
facsimile

- (a) the sender's name, address and telephone number;
- (b) the name of the person to be served;
- (c) the date and time of transmission;
- (d) the total number of pages transmitted, including the cover page;
- (e) the telephone number from which the document is transmitted; and
- (f) the name and telephone number of a person to contact in the event of transmission problems.

15a.—(1) Where an attempt is made to effect service under subsection 15 (1) on an insurer or an agent, and for any reason service cannot be effected, the document may be served on the Superintendent and such service shall be deemed to be service on the insurer or agent.

Deemed
service

(2) Service may be made on the Superintendent under subsection (1) by first class registered mail addressed to the Superintendent at the Superintendent's office, or by personal service on the Superintendent.

Method of
service

(3) Where a document is served on the Superintendent under subsection (1), the Superintendent shall forthwith mail the document to the insurer or agent at the address for the insurer or agent contained in the records of the Superintendent.

Superin-
tendent to
forward
document

11. Section 18 of the said Act is repealed and the following substituted therefor:

18. The Commission may publish any information that the Commissioner, the Superintendent or the Director considers to be in the public interest.

Publication
by
Commission

12.—(1) Subsections 21 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:

Necessity for
licence

(1) Every insurer undertaking insurance in Ontario or carrying on business in Ontario shall obtain from the Commissioner and hold a licence under this Act.

Prohibition
re: licence

(2) No person shall carry on business as an insurer or engage in an act constituting the business of insurance in Ontario without a licence under this Act.

Idem

(2a) No insurer shall carry on business in Ontario as an insurer of a class of insurance that is not authorized by its licence under this Act.

Prohibition
against acting
on behalf of
unlicensed
insurer

(3) No person in Ontario shall do or cause to be done any act or thing mentioned in subsection 20 (3) on behalf of or as agent of an insurer that is not licensed under this Act.

(2) Subsection 21 (5) of the said Act is repealed and the following substituted therefor:

Unauthorized
insurance

(5) No insurer that is incorporated in Ontario and licensed under this Act shall carry on or solicit business as an insurer in another jurisdiction unless it is authorized to do so under the laws of that jurisdiction.

13. Subsection 23 (1) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

14. Subsection 24 (4) of the said Act is repealed and the following substituted therefor:

Conditions

(4) A licence may be issued subject to such limitations and conditions as may be prescribed by regulation.

15. Paragraph 1 of subsection 25 (1) of the said Act is amended by striking out “benefits set forth in Schedule C” in the last line and inserting in lieu thereof “no-fault benefits required by subsection 232 (1)”.

16.—(1) Subsection 28 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out “Minister” in the seventh line and inserting in lieu thereof “Commissioner”.

(2) Subsection 28 (1a) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(3) Subsection 28 (1b) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

17. Subsection 32 (3) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

18. Subsection 33 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

19.—(1) Subsection 35 (1) of the said Act is amended by striking out “Minister” in the third line and inserting in lieu thereof “Commissioner”.

(2) Subsection 35 (3) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

(3) Subsection 35 (4) of the said Act is amended by striking out “Minister” in the first line and in the tenth line and inserting in lieu thereof in each instance “Commissioner”.

20. Subsection 36 (1) of the said Act is amended by striking out “Minister” in the sixth line and inserting in lieu thereof “Commissioner”.

21. Section 37 of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

22.—(1) Subsection 38 (1) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 38 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

(3) Subsection 38 (3) of the said Act is amended by striking out “Minister” in the third line and inserting in lieu thereof “Commissioner”.

(4) Subsection 38 (4) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

23. Subsection 39 (1) of the said Act is amended by striking out “Minister” in the tenth line and in the eleventh line and inserting in lieu thereof in each instance “Commissioner”.

24.—(1) Subsection 40 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 6, is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 40 (2) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 6, is further amended by striking out “Minister” in the first line and in the sixth line and inserting in lieu thereof in each instance “Commissioner”.

(3) Subsection 40 (3) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 6, is further amended by striking out “Minister” in the third and fourth lines and in the fourth line and inserting in lieu thereof in each instance “Commissioner”.

(4) Subsection 40 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 6, is amended by striking out “Minister” in the first line and in the second line and inserting in lieu thereof in each instance “Commissioner”.

25.—(1) Subsection 41 (2) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

(2) Subsection 41 (3) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(3) Subsection 41 (4) of the said Act is amended by striking out “Minister” in the first line and in the sixth line and inserting in lieu thereof in each instance “Commissioner”.

(4) Subsection 41 (5) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

26.—(1) Subsection 42 (3) of the said Act is amended by striking out “Minister” in the first line, in the fourth line and in the eighth line and inserting in lieu thereof in each instance “Commissioner”.

(2) Subsection 42 (4) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

(3) Subsection 42 (6) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

27. Section 43 of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

28. Section 44 of the said Act is amended by striking out “Minister” in the second line and in the third line and inserting in lieu thereof in each instance “Commissioner”.

29. Section 79 of the said Act is amended by striking out “Superintendent” in the fourth line and inserting in lieu thereof “Commissioner”.

30.—(1) Subsection 80 (1) of the said Act is repealed and the following substituted therefor:

(1) When required by the Commissioner, licensed insurers shall prepare and file with the Commission or with an agency designated by the Commissioner a return respecting the experience of the insurer’s business in a form approved by the Commissioner containing such information as the Commissioner may require. Returns

(2) Subsections 80 (3), (4) and (5) of the said Act are repealed and the following substituted therefor:

(3) If it appears to the Commissioner that the insurer’s records of premium income and claims paid are not kept in such a manner as to show correctly the experience of the insurer for the purposes of the return, the Commissioner may nominate an accountant to proceed under his or her direction to audit the books and records of the insurer and to give such instructions as will enable the officers of the insurer to keep the records correctly after the audit. Audit and direction

(4) The insurer shall pay the accountant for an audit under subsection (3) forthwith upon receiving a certificate of the Commission stating the amount payable. Expenses of audit

(5) Any amount payable to an accountant under subsection (3) that is not paid within thirty days from the date on which the insurer receives the Commission’s certificate becomes a debt owing to the Crown. Debt to the Crown

31.—(1) Subsection 81 (1) of the said Act is repealed and the following substituted therefor:

Annual and
interim
statements

(1) Subject to sections 323 and 327, every licensed insurer shall,

- (a) prepare annually and deliver to the Superintendent, on or before the prescribed date for the prescribed category of insurer, a statement of the condition of affairs of the insurer for the year that ended on the 31st day of December next preceding the delivery of the statement; and
- (b) prepare and deliver to the Superintendent when required by the Superintendent, for the prescribed category of insurer, an interim statement for the period specified by the Superintendent containing such information as the Superintendent considers necessary to assess the insurer's condition of affairs.

Contents of
annual
statement

(1a) A statement of the condition of affairs of an insurer under clause (1) (a) shall be in a form approved by the Superintendent, and shall set out,

- (a) the assets, liabilities, revenues and expenses of the insurer for the year;
- (b) particulars of the business done by the insurer in Ontario during the year; and
- (c) such other information as the Superintendent considers necessary to assess an insurer's condition of affairs.

Auditor's
report

(1b) A statement of the condition of affairs of an insurer under clause (1) (a) shall be accompanied by a report of an auditor prepared in the manner required by the Superintendent.

(2) Subsection 81 (2) of the said Act is amended by striking out "subsection (1)" in the fourth line and inserting in lieu thereof "clause (1) (a)".

(3) Subsections 81 (4), (5), (6), (7), (8) and (9) of the said Act are repealed and the following substituted therefor:

Indirect
collection of
personal
information

(4) The Superintendent is authorized to obtain from insurers personal information about identifiable individuals where the collection of the information is required to monitor the condition of affairs of the insurer and the information is collected on a statement made under subsection (1).

32. The said Act is further amended by adding thereto the following sections:

81a. Notice of the requirements for returns under section 80 or 81 is sufficient if it is sent by first class ordinary mail addressed to the insurer at the insurer's address for service of notice or process as identified in the records of the Superintendent. Notice of returns

81b. The financial statements required under this Act shall be prepared in accordance with this Act and the regulations. Preparation of financial statements

33. Subsection 87 (7) of the said Act is amended by striking out "Minister" in the twentieth line and in the twenty-first line and inserting in lieu thereof in each instance "Commissioner".

34. Section 93 of the said Act is amended by striking out "Superintendent" in the second line and inserting in lieu thereof "Commission".

35. Subsection 94 (2) of the said Act is amended by striking out "Minister" in the first line and in the fifth line and inserting in lieu thereof in each instance "Commissioner".

36. Section 97 of the said Act and the heading "Penalties" preceding section 97 are repealed.



37.—(1) Clause 98 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) prescribing fees in relation to matters under this Act, including fees for licences and their renewal, for the filing of documents and, for any services provided by or through the Ministry of Financial Institutions or the Commission.

(2) Clause 98 (1) (b) of the said Act is repealed and the following substituted therefor:

- (b) establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits;
- (ba) requiring insurers to offer optional benefits in excess of the benefits that must be provided under clause (b) and establishing terms, conditions, provisions, exclusions and limits related to such benefits;

- (bb) prescribing categories of insurers for the purpose of subsection 80 (1), requiring insurers to file a return under that subsection by category and prescribing the information that insurers may solicit from insured persons for purposes of such returns;
 - (bc) prescribing categories of insurers for the purpose of subsection 81 (1);
 - (bd) prescribing dates for the purpose of clause 81 (1) (a);
 - (be) governing the preparation of financial statements required under this Act or the regulations;
 - (bf) prescribing the information to be given to applicants or to insured persons under subsection 203b (1) and the circumstances in which it is to be given;
 - (bg) establishing requirements that must be met before an insurer declines to issue, terminates or refuses to renew a contract of automobile insurance;
- ➡
- (bh) prescribing grounds for which an insurer cannot decline to issue, terminate or refuse to renew a contract of automobile insurance;
 - (bi) governing the payment of premiums for automobile insurance in instalments, setting maximum rates of interest in relation to instalment payments and exempting any insurer, class of insurers or class of policies from statutory condition 1c set out in section 207;
 - (bj) exempting any insurer, and exempting any insurer in respect of certain types of contracts of automobile insurance, from section 208a; ▲
 - (bk) prescribing rules for determining the degree of fault in various situations for loss or damage arising directly or indirectly from the use or operation of an automobile;
 - (bl) providing for and governing indemnification and subrogation where section 230a or subsection 231 (5b) applies;
 - (bm) increasing the amount of damages required before a notice must be given under section 230b;

- 
- (bn) prescribing any activity or failure to act that constitutes an unfair or deceptive act or practice under subclause 393 (b) (xii), and prescribing requirements to be met by insurers that, if not complied with, constitute an unfair or deceptive act or practice;
 - (bo) prescribing classes of persons, classes of automobiles and terms and conditions for the purposes of subsection 239b (1); 
 - (bp) prescribing rules of procedure and setting time-limits in respect of mediation, arbitration and appeal proceedings under sections 242b to 242e;
 - (bq) prescribing expenses that may be awarded to insured persons under subsection 242d (11) and setting maximum amounts that may be awarded for such expenses;
 - (br) permitting the Director to vary or revoke orders and prescribing rules of procedure and setting conditions and setting time-limits in respect thereof and permitting the Director to proceed by way of a hearing or by way of written submissions.

(3) Subsection 98 (1) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 8 and 1987, chapter 8, section 3, is further amended by adding thereto the following clauses:

- (fa) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance in respect of which sections 369 to 372c apply;
- (fb) prescribing classes of risk exposure to be used by insurers in determining the rates for each coverage and category of automobile insurance;
- (fc) prescribing classes of risk exposure which insurers are prohibited from using in determining the rates for each coverage and category of automobile insurance;
- (fd) prescribing, for the purpose of section 6h, the method of determining the share of an assessment that is payable by an insurer.

38. Subsection 143 (3) of the said Act is amended by striking out “Minister” in the fourth line and inserting in lieu thereof “Commissioner”.

39. Section 201 of the said Act is repealed and the following substituted therefor:

Definitions

201.—(1) In this Part,

“automobile”, includes a motor vehicle required under any Act to be insured under a motor vehicle liability policy;

“contract” means a contract of automobile insurance;

“excluded driver” means a person named as an excluded driver in an endorsement under section 217a;

“fault determination rules” means the rules prescribed under clause 98 (1) (bk);

“insured” means a person insured by a contract whether named or not and includes every person who is entitled to no-fault benefits under the contract whether or not described therein as an insured person;

“no-fault benefits” means the benefits set out in the regulations made under clauses 98 (1) (b) and (ba);

“*No-Fault Benefits Schedule*” means the regulations made under clauses 98 (1) (b) and (ba);

“occupant”, in respect of an automobile, means,

- (a) the driver,
- (b) a passenger, whether being carried in or on the automobile,
- (c) a person getting into or on or getting out of or off the automobile;

“spouse” means either of a man and a woman who,

- (a) are married to each other,
- (b) have together in good faith entered into a marriage, or
- (c) are not married to each other and have cohabited continuously for a period of not less than three

years, or have cohabited in a relationship of some permanence if they are the natural or adoptive parents of a child.

(2) A reference to Schedule C in any other Act or in any regulation, contract or other instrument shall be deemed to be a reference to the *No-Fault Benefits Schedule* and a reference to benefits under Schedule C shall be deemed to be a reference to no-fault benefits. Transition

(3) Every contract to which subsection 232 (1) applies shall be deemed to have been amended on the day this subsection comes into force to include no-fault benefits in accordance with the *No-Fault Benefits Schedule*. Idem

(4) The benefits of a person who, before the coming into force of this subsection, was entitled to benefits under Schedule C shall be determined in accordance with this Act as it read immediately before the repeal of Schedule C. Idem

(5) For the purposes of subsections (2) and (4), "Schedule C" means Schedule C to this Act as this Act read before the coming into force of this subsection. Idem

(6) An insurer, with the approval of the Commissioner, may offer optional benefits in excess of the benefits that must be provided under the *No-Fault Benefits Schedule*. Additional benefits

(7) Optional benefits offered under subsection (6) shall be deemed to be no-fault benefits and the *No-Fault Benefits Schedule* applies to them with necessary modifications. Idem

40. The said Act is further amended by adding thereto the following section:

201a. Except as provided in the *No-Fault Benefits Schedule*, the insured under a contract shall be deemed not to include any person who sustains loss or damage while any automobile insured under the contract is being used or operated by an excluded driver. Exception re: insured

41.—(1) Subsections 203 (1) and (2) of the said Act are repealed and the following substituted therefor:

(1) No insurer shall use a form of policy, endorsement or renewal, a claims form or a continuation certificate in respect of automobile insurance other than a form approved by the Commissioner. Approval of forms

(2) Section 203 of the said Act is amended by striking out “Superintendent” wherever it occurs and inserting in lieu thereof in each instance “Commissioner”.

42. The said Act is further amended by adding thereto the following sections:

Application
form

203a. Where so required by the regulations, no insurer shall use a form of application other than a prescribed form.

OTHER INFORMATION

Information
for
applicants,
etc.

203b.—(1) An insurer shall supply at such times as may be prescribed such information as may be prescribed to applicants for automobile insurance and to named insureds under contracts.

Information
deemed to
be part of
application

(2) Information supplied under subsection (1) by an insurer to an applicant for automobile insurance shall be deemed to be a part of the application.

Information
from brokers

203c. A broker shall provide, on the request of an applicant for insurance, the names of all insurers with whom the broker has an agency contract relating to automobile insurance and all information obtained by the broker relating to quotations on automobile insurance for the applicant.

43.—(1) Subsection 205 (5) of the said Act is amended by striking out “Superintendent” in the third line and inserting in lieu thereof “Commissioner”.

(2) Subsection 205 (7) of the said Act is amended by striking out “Superintendent” in the fourth and fifth lines and inserting in lieu thereof “Commissioner”.

44. Section 206 of the said Act is amended by adding thereto the following subsection:

No-fault
benefits
protected

(1a) Subsection (1) does not invalidate such no-fault benefits as are set out in the *No-Fault Benefits Schedule*.

45.—(1) Subsection 207 (1) of the said Act is amended by striking out “subsection 203 (2), section 208 and section 229” in the first and second lines and inserting in lieu thereof “sections 208 and 229”.

(2) The statutory conditions set out in section 207 of the said Act are amended by adding thereto the following:

**No-Fault
Benefits
Protected**

1a. Despite a failure to comply with statutory condition 1 (1), a person is entitled to such no-fault benefits as are set out in the *No-Fault Benefits Schedule*.

**Refund of
Premium
Overpayment**

1b.—(1) Where the insured has been incorrectly classified with respect to a risk exposure under this contract under the risk classification scheme used by the insurer or that the insurer is required by law to use, the insurer shall make the necessary correction, and shall refund to the insured the amount of any premium overpayment together with interest thereon for the period that the incorrect classification was in effect at the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the incorrect classification was first made rounded to the next highest whole number if the bank rate includes a fraction.

Definition

(2) In this statutory condition, “bank rate” means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule I to the *Bank Act* (Canada).

**Monthly
Payments**

1c. Unless otherwise provided by the regulations under the *Insurance Act*, the insured may pay the premium, without penalty, in equal monthly payments totalling the amount of the premium. The insurer may charge interest not exceeding the rate set out in the regulations.



(3) Statutory condition 2 set out in the said section 207 is struck out and the following substituted therefor:

**Authority to
drive**

2.—(1) The insured shall not drive or operate or permit any other person to drive or operate the automobile unless the insured or other person is authorized by law to drive or operate it.

Prohibited use

(2) The insured shall not use or permit the use of the automobile in a race or speed test or for any illicit or prohibited trade or transportation.

(4) Statutory condition 3 (1) (a) set out in the said section 207 is amended by striking out “promptly” in the first line and is further amended by striking out “accident” in the last line and inserting in lieu thereof “incident”.

(5) Statutory condition 4 (1) (a) set out in the said section 207 is amended by striking out “promptly” in the first line.

(6) Statutory condition 4 (8) set out in the said section 207 is repealed.

(7) The said statutory conditions are further amended by adding the following:

Time limit

4a. The notice required by statutory conditions 3 and 4 shall be given to the insurer within seven days of the incident but if the insured is unable because of incapacity to give the

notice within seven days of the incident, the insured shall comply as soon as possible thereafter.

(8) Statutory condition 6 set out in the said section 207 is repealed and the following substituted therefor:

Time and manner of payment of insurance money

6.—(1) The insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it.

When action may be brought


(2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with.

Limitation of actions

(3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile or its contents shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or other property shall be commenced within two years next after the cause of action arose and not afterwards.

(9) Statutory condition 7 set out in the said section 207 is amended by striking out “named in this contract” in the second and third lines.

(10) Statutory condition 8 (1) (a) set out in the said section 207 is amended by striking out “fifteen” in the first line and inserting in lieu thereof “thirty”.

(11) Statutory condition 8 (5) set out in the said section 207 is amended by striking out “fifteen” in the first line and inserting in lieu thereof “thirty”. 

46. Subsection 208 (1) of the said Act is amended by striking out “232 or 233” in the last line and inserting in lieu thereof “or 232”.

47. The said Act is further amended by adding thereto the following sections:

208a.—(1) If an insurer does not intend to renew a contract or if an insurer proposes to renew a contract on varied terms, the insurer shall,

- (a) give the named insured not less than thirty days notice in writing of the insurer’s intention or proposal; or

Notice of
expiry or
variation

- (b) give the broker, if any, through whom the contract was placed forty-five days notice in writing of the insurer's intention or proposal.

(2) Subject to subsection (4), a broker to whom an insurer has given notice under clause (1) (b) shall give the named insured under the contract not less than thirty days notice in writing of the insurer's intention or proposal. Idem

⬇ (3) Notices given under subsections (1) and (2) shall set out the reasons for the insurer's intention or proposal. Reasons ⬆

(4) Where, before a broker is required to have given notice to a named insured under subsection (2), the broker places with another insurer a replacement contract containing substantially similar terms as the expiring contract, the broker is exempted from giving notice under subsection (2). Exception

⬇ (5) A contract of insurance is in force until there is compliance with subsections (1), (2) and (3). Effect of failure to comply ⬆

208b.—(1) If so required by the regulations, an insurer shall not decline to issue or terminate or refuse to renew a contract unless the insurer has complied with the regulations. Procedures on termination, etc.

(2) The Commissioner may require insurers, agents and brokers to provide such information, material and evidence as the Commissioner considers necessary to determine compliance with subsection (1). Information

(3) An insurer may apply to the Commissioner for an exemption from subsection (1). Exemption

(4) An application for an exemption from compliance with subsection (1) shall be in a form approved by the Commissioner and shall be filed together with such information, materials and evidence as the Commissioner considers necessary. Idem

(5) The Commissioner may exempt an insurer in whole or in part from compliance with subsection (1) if, in the opinion of the Commissioner, compliance with the regulations would impair the solvency of the insurer or would cause the insurer to be in contravention of this Act or the regulations. Idem

(6) Subsection (1) does not apply in respect of a contract if any payment in respect of premiums payable under the contract or under any ancillary agreement is overdue or if, Non-application

- (a) the insured has given false particulars of the described automobile to the prejudice of the insurer;
- (b) the insured has knowingly misrepresented or failed to disclose in an application for insurance any fact required to be stated therein.



Grounds to
terminate,
etc., filed

208c.—(1) Every insurer shall file with the Commission a list of the grounds for which the insurer declines to issue, terminates or refuses to renew a contract.

Information

(2) The Commissioner may require insurers, agents and brokers to provide such information, material and evidence as the Commissioner considers necessary to determine the manner in which any ground is applied by the insurer.

Permitted
grounds

(3) An insurer shall not decline to issue, terminate or refuse to renew a contract except on a ground set out in the list filed with the Commission.

Hearing

(4) The Commissioner may order, at any time, a hearing with respect to any ground set out in the list filed with the Commission if the Commissioner is of the opinion that the ground or the manner in which it is applied,

- (a) is subjective;
- (b) is arbitrary;
- (c) bears little or no relationship to the risk to be borne by the insurer in respect of an insured; or
- (d) is contrary to public policy.

Prohibition

(5) Following a hearing with respect to a ground, the Commissioner,

- (a) may prohibit an insurer from declining to issue, terminating or refusing to renew any contract on that ground; or
- (b) may prohibit an insurer from applying that ground, in the manner specified by the Commissioner, to decline to issue, terminate or refuse to renew any contract.



48.—(1) Subsection 209 (1) of the said Act is repealed and the following substituted therefor:

(1) Subject to section 209a, every contract evidenced by an owner's policy insures the person named therein and every other person who with the named person's consent drives, or is an occupant of, an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage,

Coverage of owner's policy, specific automobile

- (a) arising from the ownership or directly or indirectly from the use or operation of any such automobile; and
- (b) resulting from bodily injury to or the death of any person and damage to property.

(1a) A lack of consent does not invalidate such no-fault benefits as are set out in the *No-Fault Benefits Schedule*.

Saving, no-fault benefits

(2) Paragraph 1 of subsection 209 (3) of the said Act is repealed and the following substituted therefor:

1. The spouse of the deceased insured.

49. The said Act is further amended by adding thereto the following section:

209a. If a contract evidenced by a motor vehicle liability policy names an excluded driver, the insurer is not liable to any person under the contract or under this Act or the regulations for any loss or damage that occurs while the excluded driver is operating an automobile insured under the contract, except as provided in the *No-Fault Benefits Schedule*.

Insurer not liable re: excluded driver

50. Clause 210 (a) of the said Act is amended by inserting after "arising" in the first line "directly or indirectly".

51. Section 214 of the said Act is amended by inserting before "use" in the fourth line "or directly or indirectly from the".

52. The said Act is further amended by adding thereto the following section:

217a. A named insured may stipulate by endorsement to a contract evidenced by a motor vehicle liability policy that any person named in the endorsement is an excluded driver under the contract.

Excluded driver endorsement

53. Subsection 218 (1) of the said Act is amended by inserting after “that” in the third line “except as provided in the *No-Fault Benefits Schedule*”.

54. Subsection 220 (1) of the said Act is amended by inserting after “ownership” in the third line “or directly or indirectly out of the”.

55. The said Act is further amended by adding thereto the following sections:

DIRECT COMPENSATION—PROPERTY DAMAGE

Application

230a.—(1) This section applies if an automobile or its contents, or both, suffers damage arising directly or indirectly from the use or operation in Ontario of any other automobile and both are insured under contracts evidenced by motor vehicle liability policies issued by insurers licensed to undertake insurance in Ontario.

Damage
recovery
from
insured's
insurer

(2) If this section applies, an insured is entitled to recover for the damages to the insured's automobile and its contents and for loss of use from the insured's insurer under the coverage described in subsection 209 (1) as though the insured were a third party.

Idem

(3) Recovery under subsection (2) shall be based on the degree of fault of the insurer's insured as determined under the fault determination rules.

Dispute
resolution

(4) An insured may bring an action against the insurer if the insured is not satisfied that the degree of fault established under the fault determination rules accurately reflects the actual degree of fault or the insured is not satisfied with a proposed settlement and the matters in issue shall be determined in accordance with the ordinary rules of law.

Restrictions
on other
recovery

(5) If this section applies,



- (a) an insured has no right of action against any person involved in the incident other than the insured's insurer for damages to the insured's automobile or its contents or for loss of use;
- (b) an insurer, except as permitted by the regulations, has no right of indemnification from or subrogation against any person for payments made to its insured under this section.

(6) This section does not affect an insured's right to recover in respect of any physical damage coverage in respect of the insured automobile. Other coverages not affected

(7) This section does not apply to damages to those contents of an automobile that are being carried for reward. Non-application

(8) This section does not apply if the damage occurred before the coming into force of this section. Idem

NOTICE OF DAMAGE

 **230b.**—(1) If an automobile insured under a contract is involved in an incident that is required to be reported to police under the *Highway Traffic Act*, the insured shall give to the insurer written notice, with all available particulars, of the incident. Notice to insurer
R.S.O. 1980, c. 198 

(2) Subject to subsection (3), the notice required by subsection (1) shall be given to the insurer within seven days of the incident. Idem

(3) If the insured is unable because of incapacity to comply with subsection (1) within seven days of the incident, the insured shall comply as soon as possible thereafter. Idem

(4) Compliance with this section shall be deemed to be compliance with statutory conditions 3 (1) (a) and 4 (1) (a) set out in section 207. Idem

56.—(1) Clause 231 (2) (b) of the said Act is amended,

- (a) by striking out “if residing in the same dwelling premises as the insured” in the first and second lines of sub-subclause (B); and
- (b) by striking out “if residing in the same dwelling premises as such person” in the fifth, sixth and seventh lines of sub-subclause (C).

(2) Section 231 of the said Act is amended by adding thereto the following subsection:

(2a) Notwithstanding clause 231 (2) (b), a person who sustains loss or damage while the insured automobile is being used or operated by an excluded driver shall be deemed not to be a person insured under the contract in which the excluded driver is named, except as provided in the *No-Fault Benefits Schedule*. Exclusion from coverage

(3) The said section 231 is further amended by adding thereto the following subsections:

Restriction
on recovery

(5a) No person has a right of action against any other person in respect of damage to an uninsured automobile or its contents arising directly or indirectly from the use or operation of an automobile if at the time of the damage the uninsured automobile was required by any Act to be insured under a contract evidenced by a motor vehicle liability policy.

◆
(4) Subsection 231 (6) of the said Act is repealed and the following substituted therefor:

Release

(6) A release under section 239a does not enure to the benefit of any person against whom the insurer may subrogate under subsection (5).

57. Sections 232, 233 and 234 of the said Act are repealed and the following substituted therefor:

No-fault
principle
established

◆
231a.—(1) In respect of loss or damage arising directly or indirectly from the use or operation, after this section comes into force, of an automobile and despite any other Act, none of the owner of an automobile, the occupants of an automobile or any person present at the incident are liable in an action in Ontario for loss or damage from bodily injury arising from such use or operation in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* involving the automobile unless, as a result of such use or operation, the injured person has died or has sustained,

(a) permanent serious disfigurement; or

(b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

Idem

(2) Subsection (1) does not relieve any person from liability other than the owner of the automobile, occupants of the automobile and persons present at the incident. ◆

Judicial
determination

(3) In an action for loss or damage from bodily injury arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before or at trial, determine if the injured person has, as a result of the accident, died or has sustained,

(a) permanent serious disfigurement; or

- (b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

(4) Even though a defence motion under subsection (3) is denied, the defendant may, at trial, in the absence of the jury, and following the hearing of evidence, raise the defence provided in subsection (1). Idem

(5) In a proceeding involving a plaintiff who cannot recover against the owner of an automobile, the occupant of an automobile or a person present at the incident because of the operation of subsection (1), a defendant is not liable for damages caused by any person who is excluded from liability because of the operation of subsection (1) and is not liable to contribute or indemnify in respect of such damages. Joint and several liability, joint tort-feasors

(6) For the purposes of subsection (5), the proportion of liability of all persons involved in the incident from which the proceeding arose shall be determined as though all persons wholly or partly responsible for the loss or damage were parties to the proceeding even though any such person is not actually a party. Idem

231b.—(1) The damages awarded to a person in a proceeding for loss or damage arising directly or indirectly from the use or operation of an automobile shall be reduced by, Collateral source rule not to apply

- (a) all payments that the person has received or that were or are available for no-fault benefits and by the present value of any no-fault benefits to which he or she is entitled;
- (b) all payments that the person has received under any medical, surgical, dental, hospitalization, rehabilitation or long-term care plan or law and by the present value of such payments to which he or she is entitled;
- (c) all payments that the person has received or that were or are available for loss of income under the laws of any jurisdiction or under an income continuation benefit plan and by the present value of any such payments to which he or she is entitled; and
- (d) all payments that the person has received under a sick leave plan arising by reason of the person's occupation or employment.

Exception R.S.O. 1980, c. 505 (2) Payments or benefits received or that were, are or may become available to a person under the *Workers' Compensation Act* shall not be applied under subsection (1) to reduce the damages awarded.

Idem (3) A reduction made under subsection (1) does not apply for the purpose of determining a person's entitlement to compensation under subsection 8 (2) of the *Workers' Compensation Act*.

Limitation on subrogation (4) A person who has made a payment or who has a liability to pay a benefit described in clause (1) (a), (b), (c) or (d) is not subrogated to a right of recovery of the insured against another person in respect of that payment or benefit.

Idem (5) The Workers' Compensation Board is not subrogated to a right of recovery of the insured against another person in respect of a payment or benefit paid by the Workers' Compensation Board to the insured or in respect of a liability to make such payment or benefit.

Application (6) This section applies to damages awarded for loss or damage arising directly or indirectly from the use or operation, after the 23rd day of October, 1989, of an automobile.

No-fault benefits **232.**—(1) Every contract evidenced by a motor vehicle liability policy shall provide for the no-fault benefits set out in the *No-Fault Benefits Schedule*, subject to the terms, conditions, provisions, exclusions and limits set out in that Schedule.

Liability to pay (2) The following rules apply for determining who is liable to pay no-fault benefits:

1. In respect of an occupant of an automobile,

- i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,
- ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,
- iii. if recovery is unavailable under subparagraph ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to no-fault benefits arose,

- iv. if recovery is unavailable under subparagraph iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.

2. In respect of non-occupants,

- i. the non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an insured,
- ii. if recovery is unavailable under subparagraph i, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,
- iii. if recovery is unavailable under subparagraph ii, or if there is doubt as to which automobile struck the non-occupant, the non-occupant has recourse against the insurer of any automobile involved in the incident from which the entitlement to no-fault benefits arose,
- iv. if recovery is unavailable under subparagraph iii, the non-occupant has recourse against the Motor Vehicle Accident Claims Fund.

(3) An insurer against whom a person has recourse for the payment of no-fault benefits is liable to pay the benefits. Liability

(4) If, under subparagraph i or iii of paragraph 1 or subparagraph i or iii of paragraph 2 of subsection (2), a person has recourse against more than one insurer for the payment of no-fault benefits, the person, in his or her absolute discretion, may decide the insurer from which he or she will claim the benefits. Choice of insurer

(5) Despite subsection (4), if a person is a named insured under a contract evidenced by a motor vehicle liability policy or the person is the spouse or a dependant of a named insured, the person shall claim no-fault benefits against the insurer under that policy and, if there is more than one such policy, the person, in his or her discretion, may decide the insurer from which he or she will claim the benefits. Idem

(6) The insurance mentioned in subsection (1) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses. Excess insurance

Idem

(7) The insurance mentioned in subsection (1) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses.

Payments
pending
dispute
resolution

(8) Where the *No-Fault Benefits Schedule* provides that the insurer will pay a particular no-fault benefit pending resolution of any dispute between the insurer and an insured, the insurer shall pay the benefit until the dispute is resolved.

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Particulars of
insurance

234.—(1) A person who is entitled to no-fault benefits or his or her personal representative is entitled to particulars as to whether the owner or operator of any automobile against whom the person may have a claim has insurance that provides for no-fault benefits and the name of the insurer, if any.

Demand for
particulars

(2) The person or his or her personal representative may demand the particulars described in subsection (1) by registered mail from the owner or operator of the automobile or the insurer, if any, of either of them.

Reply

(3) Every owner, operator and insurer shall comply with a demand under subsection (2) within ten days of receiving the demand.

58. Section 235 of the said Act is amended by striking out “232 or 233” in the second line and inserting in lieu thereof “or 232”.

59. Section 236 of the said Act is repealed.

60. Subsection 237 (1) of the said Act is amended by striking out “232 or 233” in the second line and inserting in lieu thereof “or 232”.

61. Section 238 of the said Act is repealed and the following substituted therefor:

Limitation of
action

238.—(1) Every proceeding against any insurer under a contract in respect of insurance provided under section 231 must be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than two years after the happening of the accident.

Idem

(2) Every proceeding against any insurer under a contract in respect of insurance provided under section 232 must be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than the period described in subsection 242c (4).

62. Subsection 239 (2) of the said Act is repealed.

63. The said Act is further amended by adding thereto the following sections:

239a. Payments made or available to a person under the *No-Fault Benefits Schedule* constitute, to the extent of such payments, a release by the person or the person's personal representative or any one claiming through or under the person by virtue of Part V of the *Family Law Act, 1986* of any claim under subsection 231 (1) or 232 (1). Release
1986, c. 4

239b.—(1) The insurer responsible under subsection 232 (2) for the payment of no-fault benefits to such classes of persons as may be named in the regulations is entitled to indemnification in relation to such benefits paid by it from the insurers of such class or classes of automobiles as may be named in the regulations involved in the incident from which the responsibility to pay the no-fault benefits arose. Indemnifi-
cation in
certain cases

(2) Indemnification under subsection (1) shall be made according to the respective degree of fault of each insurer's insured as determined under the fault determination rules. Idem

(3) No indemnity is available under subsection (2) in respect of the first \$2,000 of no-fault benefits paid in respect of a person described in that subsection. Deductible

64.—(1) Subsection 241 (1) of the said Act is amended by inserting after "ownership" in the fourth line "or directly or indirectly with the".

(2) Subsection 241 (2) of the said Act is amended by striking out "232 and 233" in the first line and inserting in lieu thereof "and 232".

65. The said Act is further amended by adding thereto the following sections:

DISPUTE RESOLUTION—NO-FAULT BENEFITS

242a.—(1) Disputes in respect of any insured person's entitlement to no-fault benefits or in respect of the amount of no-fault benefits to which an insured person is entitled shall be resolved in accordance with sections 242b to 242e and the *No-Fault Benefits Schedule*. Dispute
resolution,
procedure to
be followed

(2) Any restriction on a party's right to mediate, litigate, arbitrate or appeal as provided in sections 242b to 242e is void except where the restriction forms part of a settlement. No opting
out

- Definition (3) For the purposes of this section and sections 242b to 242e, “insured person” includes a person who is claiming funeral expenses or a death benefit under the *No-Fault Benefits Schedule*.
- Orders (4) The Director and every arbitrator shall determine issues before them by order and may make an order subject to such conditions as are set out in the order.
- Power to bind parties (5) If an insurer or an insured is represented in any mediation, arbitration or appeal proceeding under sections 242b to 242e, the mediator, arbitrator or Director, as the case may be, may adjourn the proceeding, with or without conditions, if the representative is not authorized to bind the party he or she represents.
- Mediation **242b.**—(1) Either the insured person or the insurer may refer to a mediator any matter in dispute in respect of the insured person’s entitlement to no-fault benefits or in respect of the amount of no-fault benefits to which the insured person is entitled.
- Starting the process (2) The party seeking mediation shall file an application for the appointment of a mediator with the Commission.
- Mediator’s appointment (3) The Director shall ensure that a mediator is appointed promptly.
- Mediation (4) The mediator shall enquire into the issues in dispute and attempt to effect a settlement of as many of the issues as possible within the time prescribed in the regulations for the settlement of the type of dispute in question.
- Extension of time (5) The parties may by agreement extend the time for the completion of the mediation process, even if the time for completion has expired.
- Notice of failure (6) If at any time before a settlement is effected the mediator is of the opinion that mediation will fail, he or she shall forthwith notify the parties.
- Idem (7) Mediation has failed when the mediator has given notice to the parties that in his or her opinion mediation will fail, or when the prescribed or agreed time for mediation has expired and no settlement has been reached.
- Idem (8) The mediator shall set out the last offer of the parties in the notice of failure.

242c.—(1) If mediation fails, the insured person may bring a proceeding in a court of competent jurisdiction or may refer the matter to an arbitrator. Litigation or arbitration

(2) Subject to subsection (3), if mediation fails, the insurer shall pay no-fault benefits in accordance with the last offer of settlement that it had made before the failure until otherwise agreed by the parties or until otherwise ordered by a court, an arbitrator or the Director. Payment pending dispute resolution

(3) If a dispute involves a no-fault benefit that the insurer is required to pay under subsection 232 (8) and the insured has not commenced a proceeding in a court or an arbitration proceeding within forty-five days after the day mediation failed, the insurer shall pay the insured in accordance with the last offer made by the insurer before the failure until otherwise agreed by the parties or until otherwise ordered by a court, an arbitrator or the Director. Idem

(4) A proceeding in a court or an arbitration proceeding in respect of no-fault benefits must be commenced within two years after the insurer's refusal to pay the benefit claimed or within such longer period as may be provided in the *No-Fault Benefits Schedule*. Limitation period

242d.—(1) An insured person seeking arbitration shall file an application for the appointment of an arbitrator with the Commission. Arbitration, starting the process

(2) The Director shall ensure that an arbitrator is appointed promptly. Arbitrator's appointment

(3) The arbitrator shall determine all issues in dispute and such other issues as the parties may agree. Settlement of issues

(4) The arbitration shall be conducted in accordance with the procedures and within the time-limits set out in the regulations. Procedures

(5) The Director, on the recommendation of an arbitrator, shall refer to the chair of the medical and rehabilitation advisory panel any question related to the medical condition or treatment of the insured person or related to the insured person's rehabilitation. Questions

(6) The chair of the medical and rehabilitation advisory panel shall refer the question to one or more persons (referred to in this section as advisors) who he or she considers qualified to conduct a medical or rehabilitation assessment, as the case may be. Advisors

- Idem (7) Advisors may advise and report to the arbitrator on any question before them on the basis of the evidence before the arbitrator and they may require the insured person to submit, at the expense of the insurer, to such medical or rehabilitation assessments as they may require.
- Transmittal of reports (8) Reports prepared by advisors shall be delivered to the arbitrator and the parties.
- Use of reports (9) Except with the permission of the insured person, no person shall use or provide copies of, or release information from, any report prepared by an advisor other than for the purpose of determining the claim in respect of which the arbitration was undertaken.
- Special award (10) If the arbitrator finds that an insurer has unreasonably withheld or delayed payments, the arbitrator, in addition to awarding the benefits and interest to which an insured person is entitled under the *No-Fault Benefits Schedule*, shall award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*.
- Expenses (11) The arbitrator may award to the insured person such expenses incurred in respect of an arbitration proceeding as may be prescribed in the regulations to the maximum set out in the regulations.
- Bias (12) A party may apply to the Director for the appointment of a new arbitrator if the party believes that the arbitrator is biased and the Director shall determine the issue.
- Copies of decision (13) The arbitrator, forthwith upon making a decision in an arbitration, shall deliver a copy of his or her order together with the reasons therefor to the insured person, the insurer and the Director.
- Enforcement (14) At the request of the insured person, the Director shall file a copy of the arbitrator's order in the Supreme Court and the order shall be entered and be enforceable in the same way as a judgment or order of the court.
- Idem (15) The method of enforcement set out in subsection (14) is in addition to any other method of enforcement set out in this Act.

(16) The *Arbitrations Act* does not apply to arbitrations under this section.

Non-application of R.S.O. 1980, c. 25

242e.—(1) A party to an arbitration may appeal the order of the arbitrator to the Director.

Appeal

(2) A request for an appeal shall be in writing and shall be delivered to the Commission within thirty days after the date of the arbitrator's order.

Request for appeal

(3) The appellant shall file a notice of appeal with the Director and serve a copy of the notice on the respondent.

Starting the process

(4) The Director may determine the appeal on the record or by way of a rehearing of all the issues before the arbitrator or partly on the record and partly by way of rehearing as the Director in his or her opinion may decide.

Nature of hearing

(5) Upon hearing an appeal, the Director may confirm, vary or rescind the order appealed from or substitute his or her order for that of the arbitrator.

Power of the Director

(6) An appeal does not stay the order of the arbitrator unless the Director decides otherwise.

Order not stayed

(7) Subsections 242d (5) to (11) apply with necessary modifications to appeals before the Director.

Medical reports, special awards, expenses

(8) The Director may permit persons who are not parties to the appeal to make submissions on issues of law arising in an appeal.

Interventions

(9) At the request of the insured person, the Director shall file a copy of his or her order in an appeal under this section in the Supreme Court and the order shall be entered and be enforceable in the same way as a judgment or order of the court.

Enforcement

(10) The method of enforcement set out in subsection (9) is in addition to any other method of enforcement set out in this Act.

Idem

242f.—(1) The Director may state a case in writing for the opinion of the Divisional Court upon any question that, in his or her opinion, is a question of law.

Stated case

(2) The Divisional Court shall hear and determine the stated case.

Idem

Finding of possible unfair or deceptive business practice

242g. The Director shall review arbitration orders and may recommend to the Superintendent that the Superintendent investigate the business practices of an insurer if the Director is of the opinion that any arbitration or appeal from an arbitration reveals unfair or deceptive business practices.

Variation of decision

242h. If permitted by the regulations and subject thereto, the Director may vary or revoke an order made by him or her if he or she considers it advisable to do so.

66. Subsection 299 (4) of the said Act is repealed.

67. Subsection 303 (4) of the said Act is repealed and the following substituted therefor:

Exception

(4) This section is subject to any rules to the contrary certified by and filed with the Superintendent under this Part.

68. Subsection 308 (1) of the said Act is amended by striking out “prescribe” in the last line and inserting in lieu thereof “require”.

69.—(1) Subsection 309 (1) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 309 (2) of the said Act is repealed and the following substituted therefor:

Request by Commissioner

(2) If, after considering the report, the Commissioner agrees with the Superintendent, the Commissioner shall require the society to make, within the specified time but not exceeding four years, such increase in its rates of contribution or such reduction in the benefits payable under its contracts of insurance or otherwise as will enable the society to provide for the payment of its contracts of insurance at maturity.

(3) Subsection 309 (4) of the said Act is amended by striking out “Minister” in the fourth line and inserting in lieu thereof “Commissioner”.

70. Section 310 of the said Act is amended by striking out “Minister” in the seventh line and inserting in lieu thereof “Commissioner”.

71. Subsection 311 (1) of the said Act is amended by striking out “Minister” in the second line and in the fourth line and inserting in lieu thereof in each instance “Commissioner”.

72. Subsection 322 (1) of the said Act is amended by striking out “Minister” in the tenth line and inserting in lieu thereof “Commissioner”.

73. Subsection 325 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

74. Sections 369 to 372 of the said Act are repealed and the following substituted therefor:

369.—(1) Every insurer shall apply to the Commissioner for approval of, Application
re classes,
rates

- (a) the classes of risk exposure it intends to use in determining the rates for each coverage and category of automobile insurance; and
- (b) the rates it intends to use for each coverage and category of automobile insurance.

(2) An insurer is not required to apply for approval of such classes of risk exposure as insurers may be required by regulation to use. Exception

(3) An application for approval of classes of risk exposure or rates shall be in a form approved by the Commissioner and shall be filed together with such information, material and evidence as the Commissioner may specify. Material to
be furnished

(4) The Commissioner may require an applicant to provide such information, material and evidence as the Commissioner considers necessary in addition to the information, material and evidence required to be provided in or with the application. Additional
information

(5) An application shall be deemed to have been approved by the Commissioner sixty days after it is filed unless the Commissioner within that sixty-day period advises the applicant orally or otherwise that he or she has not approved the application. Approval

(6) The Commissioner may extend the period for approval for a period not exceeding sixty days. Extension of
time

(7) If the Commissioner notifies an applicant orally that he or she has not approved an application, the Commissioner shall promptly mail a written notice to the applicant confirming that fact. Notice

- Hearing (8) If the Commissioner notifies an applicant that he or she has not approved an application, the Commissioner shall hold a hearing.
- Hearing, public interest (9) The Commissioner shall not approve an application if the Commissioner considers that it is in the public interest to hold a hearing on the application.
- Refusal to approve (10) The Commissioner shall refuse to approve an application if the Commissioner considers that the proposed classes of risk exposure or rates are not just and reasonable in the circumstances.
- Idem (11) The Commissioner shall refuse to approve an application respecting proposed classes of risk exposure that the Commissioner considers,
- (a) are not reasonably predictive of risk; or
 - (b) do not distinguish fairly between classes of risk exposure.
- Idem (12) The Commissioner shall refuse to approve an application respecting proposed rates that the Commissioner considers would impair the solvency of the applicant or are excessive in relation to the financial circumstances of the insurer.
- Relevant information (13) In deciding upon an application, the Commissioner may take into account financial and other information and such other matters as may directly or indirectly affect the applicant's proposed rates or the applicant's ability to underwrite insurance for the proposed classes of risk exposure.
- Powers of the Commissioner (14) Following a hearing, the Commissioner may approve or refuse to approve the application or may vary the classes of risk exposure or the rates, and the approval may be subject to such conditions or restrictions as the Commissioner considers appropriate in the circumstances.
- Definition (15) In this section, "insurer" includes the Facility Association.
- Exemptions from approval process **370.**—(1) The Commissioner may exempt insurers, other than the Facility Association, from making an application under section 369 in respect of designated categories or coverages of automobile insurance.
- Filing (2) An insurer shall file the classes of risk exposure and rates it intends to use for the exempted categories or cover-

ages of automobile insurance in a form approved by the Commissioner.

(3) An insurer may use the classes of risk exposure or rates filed under this section thirty days after filing them. Effective date

(4) If the Commissioner revokes an exemption, insurers are required to apply within thirty days after the revocation for approval under section 369 of the classes of risk exposure and rates it is using for the categories or coverages of automobile insurance affected by the revocation. Revocation of exemption

(5) An insurer may continue to use the classes of risk exposure and rates filed before the Commissioner revoked the exemption until the insurer's application under subsection (4) is determined. Idem

371.—(1) The Commissioner may require that affiliated insurers who write automobile insurance in Ontario file their applications under section 369 or 370 concurrently. Applications by affiliates

(2) The Commissioner may consider the classes of risk exposure and the rates of the affiliates of an insurer when deciding upon the insurer's application. Idem

(3) For the purpose of this section, an insurer is considered to be affiliated with another insurer if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person. Interpretation

372.—(1) Despite any approval or exemption under section 369 or 370, the Commissioner may, at any time, order a hearing with respect to any classes of risk exposure or rates for any coverage or category of automobile insurance of an insurer if the Commissioner is of the opinion that, Reconsideration

- (a) the classes of risk exposure, rules, procedures, factors or rates are not just and reasonable in the circumstances;
- (b) the classes of risk exposure are not reasonably predictive of risk or do not distinguish fairly between classes of risk exposure; or
- (c) the rates would impair the solvency of the insurer or are excessive in relation to the financial circumstances of the insurer.

Variation	(2) Following a hearing, the Commissioner may vary the classes of risk exposure the insurer may use or the rates it may charge.
Deemed approval	(3) For the purposes of section 372b, classes and rates varied under subsection (2) shall be deemed to be classes and rates approved by the Commissioner.
Policy statements	372a. —(1) The Minister may issue policy statements on matters related to coverages or categories of automobile insurance, classes of risk exposure and automobile insurance rates.
When effective	(2) A policy statement takes effect on the day it is published in <i>The Ontario Gazette</i> .
Effect of statement	(3) The Commissioner shall have regard to the policy statements issued under this section in making decisions under this Part.
Prohibition, classes	372b. —(1) No insurer shall use a class of risk exposure in determining a rate for a coverage or category of automobile insurance that is not approved by the Commissioner or authorized under section 370 or by regulation.
Idem, rates	(2) No insurer shall use a rate for a coverage or category of automobile insurance that is not approved by the Commissioner or authorized under section 370.
Definition	(3) In this section, “insurer” includes the Facility Association.
Coming into force	(4) This section comes into force on a day to be named by proclamation of the Lieutenant Governor.
	75. —(1) Clause 388 (8) (g) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.
	(2) Subsection 388 (8a) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 8, section 8, is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.
	76. —(1) Clause 393 (a) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 70, section 32, is repealed and the following substituted therefor:
	(a) “person” includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society

known as Lloyd's, fraternal society, mutual benefit society or syndicate.

(2) Clause 393 (b) of the said Act is amended,

- (a) by striking out “in the business of insurance” in the first and second lines;**
- (b) by striking out “or” at the end of subclause (viii); and**
- (c) by striking out subclause (ix) and inserting in lieu thereof:**
 - (ix) any conduct resulting in unreasonable delay or resistance to the fair adjustment and settlement of claims,
 - (x) making the issuance or variation of a policy of automobile insurance conditional upon the purchase by the insured of another insurance policy,
 - (xi) when rating a person or a vehicle as an insurance risk for the purpose of determining the premium payable for a policy of automobile insurance, misclassifying the person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use, or
 - (xii) any activity or failure to act that is prescribed as an unfair or deceptive act or practice.

77. Section 394 of the said Act is repealed and the following substituted therefor:

394. No person shall engage in any unfair or deceptive act or practice. Prohibition

78. Sections 396 and 397 of the said Act are repealed and the following substituted therefor:

396.—(1) If, in the opinion of the Superintendent, a person is committing any act or pursuing any course of conduct that is an unfair or deceptive act or practice or might reasonably be expected to result in a state of affairs that would constitute an unfair or deceptive act or practice, the Superintendent may give notice to the person of the Superintendent's intention to order the person, Superintendent's orders

- (a) to cease or refrain from doing any act or pursuing any course of conduct identified by the Superintendent;
- (b) to cease engaging in the business of insurance or any aspect of the business of insurance specified by the Superintendent; or
- (c) to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

Hearing

(2) A person, by written notice served on the Superintendent within fifteen days after the service of the notice under subsection (1), may require a hearing before the Superintendent.

Interim order

(3) Notwithstanding subsection (2), where, in the opinion of the Superintendent, the interests of the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Superintendent, without prior notice, may make an interim order as described in clause (1) (a), (b) or (c) which shall take effect immediately on its making, and which shall become permanent on the fifteenth day after its making unless within that time a hearing before the Superintendent is requested.

When order
may be made

(4) If no hearing is requested within the time set out in subsection (2) or (3), or if a hearing is held and the Superintendent is of the opinion that an order described in clause (1) (a), (b) or (c) should be made, the Superintendent may make a permanent order under any of those clauses which shall take effect immediately on its making or at such later date as may be set out in the order.

Hearing

(5) A request for a hearing under subsection (3) shall be in writing and served on the Superintendent.

Extension of
order

(6) If a hearing is requested under subsection (3), the Superintendent may extend the temporary order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

Modification
or revocation

(7) The Superintendent may, after giving the person named in the order an opportunity to be heard, modify or, without holding a hearing, revoke an order made under this section.

79. The said Act is further amended by adding thereto the following Part:

PART XX

EXAMINATION AND ENFORCEMENT

407. In this Part, “examination” means examination, Definition
inquiry, appraisal, audit or inspection under this Act.

408.—(1) It is a condition of the licensing of a person that the person facilitate examinations. Examinations, general

(2) For the purpose of an examination, the insurer, agent or adjuster shall prepare and submit to the person conducting the examination such statements or returns with respect to the insurer’s, agent’s or adjuster’s business, finances or other affairs, in addition to the statements or returns mentioned in this Act, as the Superintendent may require. Material to be furnished

(3) The officers, agents and employees of an insurer, agent or adjuster shall open the books for inspection and shall otherwise facilitate an examination under this Act so far as it is in their power. Duty of officers, etc.

(4) In order to facilitate an examination of the books and records of an insurer, agent or adjuster, the Superintendent or a person designated by the Commissioner may require the insurer, agent or adjuster to produce the books and records at his, her or its principal place of business in Ontario, or at such other convenient place as the Superintendent may direct. Production of books

(5) On the direction of the Superintendent or a person designated by the Commissioner, if an examination of an insurer is made at an office situate outside Ontario, the insurer shall pay the costs and expenses of the examination. Expense of further examination

409.—(1) A person conducting an examination, for the purpose of carrying out that person’s duties, Powers of examination, etc.

- (a) may enter any place at any reasonable time;
- (b) may require the production for inspection of documents or things that may be relevant to the carrying out of the duties;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall return them within a reasonable time to the person who produced them; and

- (d) may question a person on matters that are or may be relevant to the carrying out of the examination.

Entry to
dwellings

(2) No person may exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Warrant for
search

(3) Where a justice of the peace is satisfied on information upon oath that there are in a place documents or things that there are reasonable grounds to believe will afford evidence relevant to the carrying out of an examination under this Act, the justice of the peace may issue a warrant authorizing the person named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for
entry

(4) Where a justice of the peace is satisfied on information upon oath that there are reasonable grounds to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a person may carry out an examination, the justice of the peace may issue a warrant authorizing such entry by the person named in the warrant.

Execution
and expiry of
warrant

(5) A warrant issued under subsection (3) or (4),

- (a) shall specify the hours and days during which it may be executed; and
- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(6) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede a person carrying out an examination.

Idem

(7) Subsection (6) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (3).

Admissibility
of copies

(8) Copies of, or extracts from, documents and things removed from premises under this Act and certified by the person who made the copies as being true copies of, or extracts from, the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

410.—(1) An auditor shall promptly report to the insurer and to the Superintendent any breach of this Act of which the auditor is aware or is made aware under subsection (2) and, if the insurer does not act to rectify the breach within thirty days, the auditor shall promptly report the failure to rectify to the Superintendent.

Reporting by
auditor

(2) Any person undertaking professional services for an insurer who, in providing the professional services, becomes aware of a breach of this Act shall promptly report the breach to the insurer and the auditor of the insurer or, if there is no auditor, to the Superintendent.

Reporting by
others

(3) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client.

Solicitor-
client
privilege

411. A person who in good faith makes an oral or written statement or disclosure to the Commissioner, the Superintendent, an employee of the Commission or any other person acting under the authority of this Act that is relevant to the duties of the person to whom the statement or disclosure is made shall not be liable in any civil action arising out of the making of the statement or disclosure.

No liability

412.—(1) In this section, "person" includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society known as Lloyd's, fraternal society, mutual benefit society or syndicate.

Definition

(2) Every person is guilty of an offence who,

Offences

- (a) directly or indirectly furnishes false, misleading or incomplete information to the Commission whether the information is required under this Act or is volunteered;
- (b) fails to comply with any requirement of, or any order or direction made under, this Act;
- (c) fails to comply with any written undertaking given to the Commissioner or the Superintendent;
- (d) contravenes this Act or the regulations; or
- (e) contravenes any term, condition or restriction imposed by a licence.

(3) On conviction for an offence under this Act, the person convicted is liable on a first conviction to a fine of not more

Penalty

than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000.

Derivative

(4) Every director, officer and chief agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association who,

- (a) caused, authorized, permitted or participated in the corporation or unincorporated association committing an offence referred to in subsection (2); or
- (b) failed to take reasonable care to prevent the corporation or unincorporated association from committing an offence referred to in subsection (2),

is guilty of an offence and is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000, whether or not the corporation or unincorporated association has been prosecuted for or convicted of the offence.

Restitution

(5) Where a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

Order for compliance

413.—(1) If it appears to the Superintendent that any person has failed to comply with or is not complying with,

- (a) any order, decision, direction or inquiry made under this Act;
- (b) any undertaking given; or
- (c) any term, condition or restriction imposed on its licence, where applicable,

the Superintendent may, in addition to any other rights under this Act, apply to a judge of the High Court for an order directing the person to comply with or restraining the person from violating the order, decision, direction, inquiry, undertaking, term, condition or restriction, and the judge may make such order as the judge considers appropriate.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1).

Limitation period

414. No proceeding for an offence under this Act may be commenced more than two years after the earlier of the date

on which the facts upon which the proceedings are based first came to the knowledge of the Commissioner or the Superintendent.

80. Schedule C to the said Act is repealed.

81. The *Automobile Insurance Rates Control Act, 1989*, being chapter 34, is repealed.

82.—(1) Subclause 1 (c) (ii) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (ii) provides the no-fault benefits set out in the *No-Fault Benefits Schedule* under the *Insurance Act*. R.S.O. 1980,
c. 218

(2) Section 1 of the said Act is amended by adding thereto the following clause:

- (ca) “Commissioner” means the commissioner of insurance under the *Insurance Act*. R.S.O. 1980,
c. 218

(3) Clause 1 (n) of the said Act is repealed.

(4) Section 1 of the said Act is amended by adding thereto the following subsection:

- (2) Notwithstanding that a motor vehicle is insured under a contract of automobile insurance, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the *Insurance Act* with respect to that contract unless the excluded driver is a named insured under another contract of automobile insurance. Exception re:
excluded
driver

R.S.O. 1980,
c. 218

(5) The said Act is amended by striking out “Superintendent” wherever it occurs and inserting in lieu thereof in each instance “Commissioner”.

(6) Section 3 of the said Act is amended by adding thereto the following subsection:

- (1a) Despite subsection (1), an operator of a motor vehicle who is named as an excluded driver under the contract of automobile insurance under which the vehicle is insured shall have in the vehicle at all times an insurance card evidencing that the operator is a named insured under another contract of automobile insurance, and the operator shall surrender the Excluded
driver to
carry
insurance
card

insurance card for reasonable inspection upon the demand of a police officer.

(7) Subsection 3 (2) of the said Act is amended by striking out “subsection (1)” in the first line and inserting in lieu thereof “this section”.

(8) Subsection 10 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 18, section 32, is repealed and the following substituted therefor:

Idem

(4) Rates prepared under subsection (3) do not come into effect until approved under section 369 of the *Insurance Act*.

83. Section 66 of the *Corporations Tax Act*, being chapter 97 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Exception

R.S.O. 1980,
c. 218

(1a) Clause (1) (b) does not apply in respect of a contract of automobile insurance within the meaning of the *Insurance Act* unless the automobile insured by the policy is,

- (a) an ambulance or funeral vehicle;
- (b) a bus, limousine or taxi or other vehicle that carries passengers for reward or as part of a transportation service;
- (c) a fire department or police vehicle;
- (d) a driver training vehicle;
- (e) a vehicle rented for a period of less than thirty days;
- (f) a vehicle used primarily to transport things in connection with the insured's business or occupation;
or
- (g) a vehicle that weighs more than 4,500 kilograms.

84. Clause 1 (1) (t) of the *Credit Unions and Caisses Populaires Act*, being chapter 102 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (t) “Superintendent” means the Superintendent of Deposit Institutions.

85. Section 36 of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

(4) Despite subsection (1), the Plan is not subrogated to the rights of an insured person in respect of personal injuries arising directly or indirectly from the use or operation of an automobile after this section comes into force in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* under the *Insurance Act*.

Exception

R.S.O. 1980,
c. 218

86.—(1) Section 1 of the *Motor Vehicle Accident Claims Act*, being chapter 298 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 12, section 1, is further amended by adding thereto the following subsection:

(1a) Notwithstanding that a motor vehicle is insured under a motor vehicle liability policy, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the *Insurance Act* with respect to that policy unless the excluded driver is a named insured under another motor vehicle liability policy.

Exception re:
excluded
driver

R.S.O. 1980,
c. 218

(2) The said Act is amended by adding thereto the following section:

4b.—(1) Any person who has recourse against the Fund for no-fault benefits under section 232 of the *Insurance Act* may make application, in a form prescribed by the Minister, for payment out of the Fund of the benefits.

No-fault
benefits

(2) The Minister may, in respect of an application made under subsection (1), make payment out of the Fund of an amount that the Minister considers proper in all the circumstances if the applicant signs a release in respect thereof.

Payment out
of Fund
authorized

87. Section 10 of the *Motorized Snow Vehicles Act*, being chapter 301 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

10. The *Highway Traffic Act*, except Part XI, and the *Motor Vehicle Accident Claims Act*, except section 4b, do not apply to a motorized snow vehicle or to the driving thereof.

Application
of
R.S.O. 1980,
cc. 198, 298

88. The *Ontario Automobile Insurance Board Act, 1988*, being chapter 18, is repealed.

89.—(1) Section 1 of the *Prepaid Hospital and Medical Services Act*, being chapter 388 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

R.S.O. 1980,
c. 218

(aa) “Commissioner” means the commissioner of insurance under the *Insurance Act*.

(2) Section 12 of the said Act is repealed and the following substituted therefor:

Appeal

12. An association that considers itself aggrieved by a decision of the Superintendent may appeal the decision to the Commissioner in accordance with the procedures set out in the *Insurance Act*.

R.S.O. 1980,
c. 218

90.—(1) Section 1 of the *Registered Insurance Brokers Act*, being chapter 444 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

R.S.O. 1980,
c. 218

(ca) “Commissioner” means the commissioner of insurance under the *Insurance Act*.

(2) Section 9 of the said Act is repealed and the following substituted therefor:

Ontario
Insurance
Commission
R.S.O. 1980,
c. 218

9.—(1) The Ontario Insurance Commission established under the *Insurance Act* shall be deemed to have an interest in the Corporation, as the representative of all persons who may be served by registered insurance brokers.

Information

(2) The Corporation shall, within a reasonable time, furnish the Commissioner or the Superintendent, as the case may be, with such information and financial statements with respect to the Corporation as he or she may require.

(3) Subsection 10 (1) of the said Act is amended,

(a) by striking out “the Minister and the Superintendent” in the second and third lines and inserting in lieu thereof “and the Minister”; and

(b) by striking out “or Superintendent” in the last line.

Transitional
1988, c. 18

91.—(1) A filing by an insurer under a regulation made under clause 29 (1) (e) of the *Ontario Automobile Insurance Board Act, 1988* respecting classes of risk exposure and rates for automobile insurance shall be deemed to be the insurer’s first application under section 369 of the *Insurance Act* if the regulation so indicates and the Commissioner of Insurance so orders.

R.S.O. 1980,
c. 218

(2) An application referred to in subsection (1) shall be deemed to have been made on the date that section 369 of the *Insurance Act* comes into force. Idem

92. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

93. The short title of this Act is the *Insurance Statute Law Amendment Act, 1990*. Short title

Bill 68

(Chapter 2
Statutes of Ontario, 1990)

An Act to amend certain Acts respecting Insurance

The Hon. M. Elston
Minister of Financial Institutions



<i>1st Reading</i>	October 23rd, 1989
<i>2nd Reading</i>	December 5th, 1989
<i>3rd Reading</i>	May 28th, 1990
<i>Royal Assent</i>	May 28th, 1990

Bill 68

1989

**An Act to amend certain Acts respecting
Insurance**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 1 of the *Insurance Act*, being chapter 218 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1986, chapter 67, section 1, is further amended by adding thereto the following paragraph:

2a. “accountant” means a person who is licensed under the *Public Accountancy Act*.

R.S.O. 1980,
c. 405

(2) Paragraph 7 of section 1 of the said Act is repealed.

(3) Section 1 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 1, is further amended by renumbering paragraph 13a as paragraph 13d and by adding thereto the following paragraphs:

13a. “class of risk exposure”, in relation to automobile insurance, includes all rules, procedures and factors used to determine the rates for each coverage and category of automobile insurance;

13b. “Commission” means the Ontario Insurance Commission;

13c. “Commissioner” means the commissioner of insurance appointed under section 3;

.

15a. “Director” means the director of arbitrations appointed under section 6;

.

56a. "rate", in relation to automobile insurance, means all amounts payable under contracts of automobile insurance for an identified risk exposure whether expressed in dollar terms or in some other manner and includes commissions, surcharges, fees, discounts, rebates and dividends.

(4) Paragraph 39 of section 1 of the said Act is repealed and the following substituted therefor:

39. "Minister" means the Minister of Financial Institutions.

(5) Paragraph 62 of section 1 of the said Act is repealed and the following substituted therefor:

62. "Superintendent" means the superintendent of insurance appointed under section 4.

2. The heading to Part I of the said Act is repealed and the following substituted therefor:

PART I

ONTARIO INSURANCE COMMISSION

ORGANIZATION

3. Sections 2, 3, 4, 5 and 6 of the said Act are repealed and the following substituted therefor:

Commission
established

2.—(1) A commission to be known as the Ontario Insurance Commission is established.

Composition
of
Commission

(2) The Commission shall be composed of the Commissioner, the Superintendent and the Director.

Duties

(3) It is the duty of the Commission to administer and enforce this Act and to supervise generally, and make recommendations to the Minister in respect of, the business of insurance in Ontario.

Powers

(4) The Commission may exercise such powers as are necessary to carry out its functions under this Act.

Commis-
sioner

3.—(1) The Lieutenant Governor in Council shall appoint a commissioner of insurance who shall carry out the duties and exercise the powers of the Commissioner under this Act and every other Act that assigns duties to or confers powers on the Commissioner.

(2) The Commissioner is the chief executive officer of the Commission. Idem

(3) If the Commissioner is absent or if there is a vacancy in the office of the Commissioner, such person as may be designated by the Commissioner shall act as and have all the powers of the Commissioner. Acting Commissioner

(4) The Commissioner may delegate in writing any of his or her powers or duties to an employee of the Commission, subject to any limitation or condition set out in the delegation. Delegation

(5) The Commissioner may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Commissioner relating to such hearings. Idem

4.—(1) The Lieutenant Governor in Council shall appoint a superintendent of insurance who shall carry out the duties and exercise the powers of the Superintendent under this Act and every other Act that assigns duties to or confers powers on the Superintendent. Superintendent

(2) The Superintendent is the chief administrative officer of the Commission and shall carry out such duties respecting the administration and enforcement of this Act as may be assigned by the Commissioner. Idem

(3) If the Superintendent is absent or if there is a vacancy in the office of the Superintendent, such person as may be designated by the Superintendent shall act as and have all the powers of the Superintendent. Acting Superintendent

(4) The Superintendent may delegate in writing any of his or her powers or duties, including duties assigned to the Superintendent by the Commissioner, to an employee of the Commission, subject to any limitation or condition set out in the delegation. Delegation

(5) The Superintendent may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Superintendent relating to such hearings. Idem

5.—(1) Such employees as are required for the purposes of the Commission may be appointed under the *Public Service Act*. Staff
R.S.O. 1980,
c. 418

(2) The Commission may engage persons, other than those appointed under subsection (1), to provide professional, tech- Professional assistance

nical or other assistance to the Commission and may establish the duties and terms of engagement and provide for the payment of the remuneration and expenses of such persons.

Director of
arbitrations

6.—(1) The Lieutenant Governor in Council shall appoint a director of arbitrations who shall carry out the duties and exercise the powers of the Director under this Act.

Acting
Director

(2) If the Director is absent or if there is a vacancy in the office of Director, such person as may be designated by the Director shall act as and have all the powers of the Director.

Delegation

(3) The Director may delegate in writing any of his or her powers or duties to an employee of the Commission, subject to any limitation or condition set out in the delegation.

Idem

(4) The Director may appoint employees of the Commission or other persons to hold hearings on his or her behalf and to exercise the powers and perform the duties of the Director relating to such hearings.

Accident
benefits
advisory
committee

6a. The Minister shall appoint an accident benefits advisory committee to make recommendations concerning persons qualified to be arbitrators, to advise the Commission concerning procedures to be used during arbitrations and to advise on such other matters as the Commission or the Minister may refer to the committee.

Arbitrators

6b.—(1) The Commissioner shall establish and maintain a roster of candidates chosen by him or her from the persons recommended by the accident benefits advisory committee to conduct arbitrations under this Act.

Appointment

(2) The Director shall appoint arbitrators only from the roster of candidates.

Mediators

6c. The Commissioner may appoint employees of the Commission or other persons to act as mediators.

Medical, etc.,
advisory
panel

6d.—(1) The Commissioner shall appoint a medical and rehabilitation advisory panel to assist and advise the Director and arbitrators under this Act.

Appointment

(2) The panel shall consist of medical practitioners who are qualified to conduct medical assessments and other persons who are qualified to conduct rehabilitation assessments.

Chair

(3) The Commissioner shall designate a member of the panel to be its chair.

6e.—(1) No action or other proceeding for damages shall be instituted against any person acting under the authority of this Act or any Act listed in the Schedule to this subsection for any act done in good faith in the performance or intended performance of the person's duty or in the exercise or intended exercise of the person's powers or for any alleged neglect or default in the performance or execution in good faith of the person's duties or powers. Immunity

SCHEDULE TO SUBSECTION (1)

- | | |
|--|------------------------|
| 1. <i>Compulsory Automobile Insurance Act.</i> | R.S.O. 1980,
c. 83 |
| 2. <i>Motor Vehicle Accident Claims Act.</i> | R.S.O. 1980,
c. 298 |
| 3. <i>Prepaid Hospital and Medical Services Act.</i> | R.S.O. 1980,
c. 388 |
| 4. <i>Registered Insurance Brokers Act.</i> | R.S.O. 1980,
c. 444 |

(2) Notwithstanding subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject. Crown
liability
R.S.O. 1980,
c. 393

(3) Except with the consent of the Commissioner, no person mentioned in subsection (1), other than the Commissioner, shall be required to testify in a civil proceeding, in a proceeding before the Commissioner or in a proceeding before any other tribunal respecting information obtained in the discharge of his or her duties under this Act or any Act listed in the Schedule to subsection (1). Testimony in
civil
proceedings

(4) Except with the consent of the Minister, the Commissioner shall not be required to testify in a civil proceeding or in a proceeding before any tribunal respecting information obtained in the discharge of his or her duties under this Act or any Act listed in the Schedule to subsection (1). Idem

6f. The Commissioner, the Superintendent, the Director and the employees of the Commission shall not be interested, directly or indirectly, other than as a policyholder, in any insurer, agent, adjuster or broker doing business in Ontario. Independence
of Commis-
sioner and
others

6g.—(1) The Commissioner shall at the close of each fiscal year file with the Minister an annual report upon the affairs of the Commission. Annual
report

Further
reports

(2) The Commissioner shall make such further reports and provide the Minister with such information as the Minister from time to time requires.

Tabling of
reports

(3) The Minister shall submit the reports to the Lieutenant Governor in Council and lay them before the Legislative Assembly if it is in session or, if not, at the next session.

Assessment
of insurers

6h.—(1) The Lieutenant Governor in Council may assess all insurers with respect to all expenses incurred and expenditures made by the Commission in the conduct of its affairs and an insurer shall pay the amount assessed against it.

Idem

(2) If an assessment is made under subsection (1), the share of a particular insurer shall be determined in the manner prescribed by regulation.

Idem

(3) The regulations made in respect of an assessment made under subsection (1) in respect of expenses and expenditures for dispute resolution under sections 242b to 242f may provide that the assessment may be based on such degree of usage of the dispute resolution system as may be provided in the regulations.

DECISIONS, HEARINGS AND APPEALS

Orders

6i.—(1) The Commissioner shall determine matters before him or her by order and may make an order subject to such conditions as are set out in the order.

Interim
orders

(2) The Commissioner may make interim orders pending the final order in a matter before him or her.

Proceedings
before the
Commissioner

6j.—(1) For a proceeding before the Commissioner, the Commissioner may,

- (a) make rules for the practice and procedure to be observed;
- (b) determine what constitutes adequate public notice;
- (c) before or during the proceeding, conduct any inquiry or inspection the Commissioner considers necessary;
- (d) in determining any matter, consider any relevant information obtained by the Commission in addition to evidence given at the proceeding, if he or she first informs the parties to the proceedings of the

additional information and gives them an opportunity to explain or refute it.

(2) The costs of and incidental to a proceeding before the Commissioner are in his or her discretion and may be fixed in any case at a sum certain or may be assessed. Costs

(3) In awarding costs, the Commissioner is not limited to the considerations that govern the award of costs in any court. Idem

(4) The Commissioner may order by whom and to whom any costs are to be paid and by whom they are to be assessed and allowed. Idem

(5) The Commissioner may establish a scale under which such costs shall be assessed. Idem

(6) Costs awarded under this section may include the costs of the Commission, regard being had to the time and expenses of the Commission. Idem

6k.—(1) The Commissioner or the Superintendent, as the case may be, may reconsider and vary or revoke a decision or order made by him or her if he or she considers it advisable to do so. Variation of decisions

(2) The Commissioner or the Superintendent, as the case may be, is not required to hold a hearing when reconsidering his or her decision, but he or she shall allow the parties to make written submissions. No hearing

6-l.—(1) A person affected by a decision of the Superintendent may appeal the decision to the Commissioner. Appeal from Superintendent's decision

(2) A request for an appeal shall be in writing and shall be delivered to the Commission within thirty days after the date of the Superintendent's decision. Request for appeal

(3) The Commissioner shall hold a hearing of an appeal. Hearing

(4) The parties to an appeal are the person who requests the appeal, the Superintendent and such other persons as the Commissioner may specify. Parties

(5) Upon hearing an appeal, the Commissioner may confirm, vary or rescind the decision appealed from or substitute his or her decision for that of the Superintendent. Power of the Commissioner

6m.—(1) The Lieutenant Governor in Council may require the Commissioner to examine and report on any ques- Reference hearings

tion related to insurance that, in the opinion of the Lieutenant Governor in Council, requires a public hearing.

Parties

(2) The Commissioner shall determine who may be a party to a reference hearing.

Exclusive jurisdiction

6n.—(1) This section applies with respect to proceedings under this Act before the Commissioner, the Superintendent and the Director and before an arbitrator.

Idem

(2) A person referred to in subsection (1) has exclusive jurisdiction to exercise the powers conferred upon him or her under this Act and to determine all questions of fact or law that arise in any proceeding before him or her and, unless an appeal is provided under this Act, his or her decision thereon is final and conclusive for all purposes.

Decisions, etc., not stayed

(3) An application for judicial review and any appeal from an order of the court on the application does not stay the decision made under this Act.

Court may grant stay

(4) Notwithstanding subsection (3), a judge of the court to which the application is made or a subsequent appeal is taken may grant a stay until the disposition of the judicial review or appeal.

Arbitration proceedings

6o. Subject to the procedures and time limits for the conduct of arbitrations set out in the regulations, the Director may make rules for the practice and procedure to be observed for a proceeding before him or her or before an arbitrator.

Power to summon witnesses, etc.

6p.—(1) For the purpose of exercising the powers and performing their duties under this or any other Act, the Commissioner, the Superintendent, the Director and every arbitrator has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Supreme Court for the trial of civil actions.

Power to require evidence

(2) A person referred to in subsection (1) may require to be made or may take and receive affidavits or depositions and may examine witnesses upon oath.

Employment of stenographer

(3) The evidence and proceedings in any matter before a person referred to in subsection (1) may be reported by a stenographer who has taken an oath before the person to report the evidence and proceedings faithfully.

Oaths

(4) A person referred to in subsection (1) may administer and certify an oath required under this Act.

4. The said Act is amended by inserting before section 7 the following heading:

ADMINISTRATION

5. The said Act is further amended by adding thereto the following section:

7a. Records required under this Act to be prepared and maintained by the Commissioner or the Superintendent may be in bound or loose-leaf form or in photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in an accurate and intelligible form within a reasonable time.

6. Subsections 8 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) The Commission may issue a certificate, Certificates

- (a) stating that on a stated day a person was or was not licensed under this Act, or that the licence was renewed, suspended, revived, revoked or cancelled on a stated day;
- (b) stating that a copy of, or extract from, a document or thing in the custody of the Commission is a true copy of, or extract from, the original;
- (c) stating the amount payable to the Treasurer of Ontario under subsection 14 (3) or (4);
- (d) stating the amount payable for an audit under subsection 80 (4);
- (e) stating whether a document was served or delivered under this Act;
- (f) stating whether any document required under this Act was filed;
- (g) stating whether a document or notification was received or issued by the Commissioner, the Superintendent, the Director, an arbitrator or a mediator under this Act;
- (h) giving particulars of the custody of any book, record, document or thing;

- (i) stating when the facts upon which a proceeding for an offence are based first came to the knowledge of the Commissioner or the Superintendent.

Idem

(3) The Commissioner or the Superintendent may sign certificates on behalf of the Commission.

7. The said Act is further amended by adding thereto the following section:

Official documents as evidence

8a.—(1) In this section, “official document” means a certificate, licence, order, decision, direction, inquiry or notice under this Act.

Idem

(2) An official document that purports to be signed on behalf of the Commission shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the official document without proof of the signature or the position of the person appearing to have signed the official document.

True copies as evidence

(3) A true copy certified by the Commission under clause 8 (2) (b) is admissible in evidence to the same extent as and has the same evidentiary value as the document or thing of which it is a copy.

8. Section 9 of the said Act is repealed and the following substituted therefor:

Right to a licence

9. It is the duty of the Superintendent to determine the right of an insurer in Ontario to be licensed under this Act but nothing in this section affects the right of the Lieutenant Governor in Council or the Commissioner to suspend or cancel any licence in the exercise of his or her authority under this Act.

9. Subsection 10 (3) of the said Act is repealed.

10. Sections 11, 12, 13, 14 and 15 of the said Act are repealed and the following substituted therefor:

Inquiries

11. The Superintendent or a person designated by the Commissioner may direct to an insurer any inquiry related to the contracts, financial affairs or the acts and practices of the insurer, and the insurer shall answer promptly, explicitly and completely.

Right of access

12. The Superintendent or a person designated by the Commissioner may at any reasonable time examine the books,

securities, documents and things related to the business of an insurer, agent, adjuster or broker.

13.—(1) Persons who are licensed under this Act, officers and agents of an insurer and the chief agent of an insurer that has its head office outside Ontario shall, on request, furnish the Superintendent or a person designated by the Commissioner with full information, Duty to furnish information

- (a) relating to any contract of insurance issued by an insurer;
- (b) relating to any settlement or adjustment under a contract of insurance; or
- (c) respecting any activities related to the business of insurance.

(2) An insured person shall, on request, furnish the Superintendent or person designated by the Commissioner with full information relating to any contract of insurance issued to the insured person or to any settlement or adjustment affecting the insured person under a contract of insurance. Idem

14.—(1) Once each year or more frequently as the Superintendent may consider appropriate for all insurers or for a particular insurer, the Superintendent or a person appointed by the Superintendent, Examination of insurers

- (a) shall examine an insurer's statement made under section 81;
- (b) may make such inquiries as are necessary to ascertain the insurer's condition and ability to meet its obligations as and when they become due; and
- (c) may make such inquiries as are necessary to ascertain whether the insurer has complied with the requirements of this Act applicable to its transactions.

(2) Subsection (1) does not apply so as to require an examination of an insurer, Exception

- (a) that is a mutual benefit society with fewer than 300 members; or
- (b) in respect of which the Superintendent adopts an examination by another government.

Preparation
of abstracts,
valuation

(3) The Superintendent may cause abstracts to be prepared of the books and vouchers and a valuation to be made of the assets and liabilities of an insurer and the insurer shall pay the Treasurer of Ontario for the cost of the preparation of the abstracts or the valuation upon receiving a certificate of the Commission stating the amount payable.

Expenses of
examination

(4) Where the office of an insurer at which an examination is made under this section is outside Ontario, the insurer shall pay the Treasurer of Ontario for the cost of the examination upon receiving a certificate of the Commission stating the amount payable.

Service of
documents

15.—(1) Service of any document for any purpose of this Act, where the method is not otherwise specified, may be made,

- (a) on any person, by personal service on the person to be served;
- (b) on an insurer, by first class registered mail addressed to the insurer or its chief executive officer at the insurer's head office in Ontario as identified in the records of the Superintendent;
- (c) on a person who is not an insurer, by first class registered mail addressed to the person's last known address;
- (d) on any person, by leaving a copy of the document with the solicitor, if any, of the person to be served, or with an employee in the solicitor's office; or
- (e) on any person, by telephone transmission of a facsimile of the document in accordance with subsection (7).

Service at
place of
residence

(2) Where an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,

- (a) leaving a copy, in a sealed envelope addressed to the person, at the place of residence with anyone who appears to be an adult member of the same household; and
- (b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.

(3) Service at a person's place of residence under subsection (2) is effective on the fifth day after the document is mailed.

Effective date of service

(4) Service by first class registered mail is not effective unless a post office receipt for the mail bearing a signature that purports to be the signature of the person to be served or of an officer of an insurer is received by the sender.

Requirements for service by mail

(5) Service by first class registered mail is effective on the date on which the sender of the mail receives the receipt described in subsection (4).

Effective date of service by mail

(6) Service on a solicitor is not effective unless the solicitor endorses on the document or a copy of it an acceptance of service on behalf of his or her client and the date of the acceptance.

Acceptance of service by a solicitor

(7) A document that is served by telephone transmission shall include a cover page indicating,

Requirements for service by facsimile

- (a) the sender's name, address and telephone number;
- (b) the name of the person to be served;
- (c) the date and time of transmission;
- (d) the total number of pages transmitted, including the cover page;
- (e) the telephone number from which the document is transmitted; and
- (f) the name and telephone number of a person to contact in the event of transmission problems.

15a.—(1) Where an attempt is made to effect service under subsection 15 (1) on an insurer or an agent, and for any reason service cannot be effected, the document may be served on the Superintendent and such service shall be deemed to be service on the insurer or agent.

Deemed service

(2) Service may be made on the Superintendent under subsection (1) by first class registered mail addressed to the Superintendent at the Superintendent's office, or by personal service on the Superintendent.

Method of service

(3) Where a document is served on the Superintendent under subsection (1), the Superintendent shall forthwith mail the document to the insurer or agent at the address for the

Superintendent to forward document

insurer or agent contained in the records of the Superintendent.

11. Section 18 of the said Act is repealed and the following substituted therefor:

Publication
by
Commission

18. The Commission may publish any information that the Commissioner, the Superintendent or the Director considers to be in the public interest.

12.—(1) Subsections 21 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:

Necessity for
licence

(1) Every insurer undertaking insurance in Ontario or carrying on business in Ontario shall obtain from the Commissioner and hold a licence under this Act.

Prohibition
re: licence

(2) No person shall carry on business as an insurer or engage in an act constituting the business of insurance in Ontario without a licence under this Act.

Idem

(2a) No insurer shall carry on business in Ontario as an insurer of a class of insurance that is not authorized by its licence under this Act.

Prohibition
against acting
on behalf of
unlicensed
insurer

(3) No person in Ontario shall do or cause to be done any act or thing mentioned in subsection 20 (3) on behalf of or as agent of an insurer that is not licensed under this Act.

(2) Subsection 21 (5) of the said Act is repealed and the following substituted therefor:

Unauthorized
insurance

(5) No insurer that is incorporated in Ontario and licensed under this Act shall carry on or solicit business as an insurer in another jurisdiction unless it is authorized to do so under the laws of that jurisdiction.

13. Subsection 23 (1) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

14. Subsection 24 (4) of the said Act is repealed and the following substituted therefor:

Conditions

(4) A licence may be issued subject to such limitations and conditions as may be prescribed by regulation.

15. Paragraph 1 of subsection 25 (1) of the said Act is amended by striking out “benefits set forth in Schedule C” in

the last line and inserting in lieu thereof “no-fault benefits required by subsection 232 (1)”.

16.—(1) Subsection 28 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out “Minister” in the seventh line and inserting in lieu thereof “Commissioner”.

(2) Subsection 28 (1a) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(3) Subsection 28 (1b) of the said Act, as enacted by the Statutes of Ontario, 1986, chapter 67, section 4, is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

17. Subsection 32 (3) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

18. Subsection 33 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

19.—(1) Subsection 35 (1) of the said Act is amended by striking out “Minister” in the third line and inserting in lieu thereof “Commissioner”.

(2) Subsection 35 (3) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

(3) Subsection 35 (4) of the said Act is amended by striking out “Minister” in the first line and in the tenth line and inserting in lieu thereof in each instance “Commissioner”.

20. Subsection 36 (1) of the said Act is amended by striking out “Minister” in the sixth line and inserting in lieu thereof “Commissioner”.

21. Section 37 of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

22.—(1) Subsection 38 (1) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 38 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

(3) Subsection 38 (3) of the said Act is amended by striking out “Minister” in the third line and inserting in lieu thereof “Commissioner”.

(4) Subsection 38 (4) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

23. Subsection 39 (1) of the said Act is amended by striking out “Minister” in the tenth line and in the eleventh line and inserting in lieu thereof in each instance “Commissioner”.

24.—(1) Subsection 40 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 6, is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 40 (2) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 6, is further amended by striking out “Minister” in the first line and in the sixth line and inserting in lieu thereof in each instance “Commissioner”.

(3) Subsection 40 (3) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 6, is further amended by striking out “Minister” in the third and fourth lines and in the fourth line and inserting in lieu thereof in each instance “Commissioner”.

(4) Subsection 40 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1986, chapter 67, section 6, is amended by striking out “Minister” in the first line and in the second line and inserting in lieu thereof in each instance “Commissioner”.

25.—(1) Subsection 41 (2) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

(2) Subsection 41 (3) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(3) Subsection 41 (4) of the said Act is amended by striking out “Minister” in the first line and in the sixth line and inserting in lieu thereof in each instance “Commissioner”.

(4) Subsection 41 (5) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

26.—(1) Subsection 42 (3) of the said Act is amended by striking out “Minister” in the first line, in the fourth line and in the eighth line and inserting in lieu thereof in each instance “Commissioner”.

(2) Subsection 42 (4) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

(3) Subsection 42 (6) of the said Act is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

27. Section 43 of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

28. Section 44 of the said Act is amended by striking out “Minister” in the second line and in the third line and inserting in lieu thereof in each instance “Commissioner”.

29. Section 79 of the said Act is amended by striking out “Superintendent” in the fourth line and inserting in lieu thereof “Commissioner”.

30.—(1) Subsection 80 (1) of the said Act is repealed and the following substituted therefor:

(1) When required by the Commissioner, licensed insurers shall prepare and file with the Commission or with an agency designated by the Commissioner a return respecting the experience of the insurer's business in a form approved by the Commissioner containing such information as the Commissioner may require. Returns

(2) Subsections 80 (3), (4) and (5) of the said Act are repealed and the following substituted therefor:

(3) If it appears to the Commissioner that the insurer's records of premium income and claims paid are not kept in such a manner as to show correctly the experience of the insurer for the purposes of the return, the Commissioner may nominate an accountant to proceed under his or her direction to audit the books and records of the insurer and to give such instructions as will enable the officers of the insurer to keep the records correctly after the audit. Audit and direction

Expenses of
audit

(4) The insurer shall pay the accountant for an audit under subsection (3) forthwith upon receiving a certificate of the Commission stating the amount payable.

Debt to the
Crown

(5) Any amount payable to an accountant under subsection (3) that is not paid within thirty days from the date on which the insurer receives the Commission's certificate becomes a debt owing to the Crown.

31.—(1) Subsection 81 (1) of the said Act is repealed and the following substituted therefor:

Annual and
interim
statements

(1) Subject to sections 323 and 327, every licensed insurer shall,

- (a) prepare annually and deliver to the Superintendent, on or before the prescribed date for the prescribed category of insurer, a statement of the condition of affairs of the insurer for the year that ended on the 31st day of December next preceding the delivery of the statement; and
- (b) prepare and deliver to the Superintendent when required by the Superintendent, for the prescribed category of insurer, an interim statement for the period specified by the Superintendent containing such information as the Superintendent considers necessary to assess the insurer's condition of affairs.

Contents of
annual
statement

(1a) A statement of the condition of affairs of an insurer under clause (1) (a) shall be in a form approved by the Superintendent, and shall set out,

- (a) the assets, liabilities, revenues and expenses of the insurer for the year;
- (b) particulars of the business done by the insurer in Ontario during the year; and
- (c) such other information as the Superintendent considers necessary to assess an insurer's condition of affairs.

Auditor's
report

(1b) A statement of the condition of affairs of an insurer under clause (1) (a) shall be accompanied by a report of an auditor prepared in the manner required by the Superintendent.

(2) Subsection 81 (2) of the said Act is amended by striking out “subsection (1)” in the fourth line and inserting in lieu thereof “clause (1) (a)”.

(3) Subsections 81 (4), (5), (6), (7), (8) and (9) of the said Act are repealed and the following substituted therefor:

(4) The Superintendent is authorized to obtain from insurers personal information about identifiable individuals where the collection of the information is required to monitor the condition of affairs of the insurer and the information is collected on a statement made under subsection (1).

Indirect
collection of
personal
information

32. The said Act is further amended by adding thereto the following sections:

81a. Notice of the requirements for returns under section 80 or 81 is sufficient if it is sent by first class ordinary mail addressed to the insurer at the insurer’s address for service of notice or process as identified in the records of the Superintendent.

Notice of
returns

81b. The financial statements required under this Act shall be prepared in accordance with this Act and the regulations.

Preparation
of financial
statements

33. Subsection 87 (7) of the said Act is amended by striking out “Minister” in the twentieth line and in the twenty-first line and inserting in lieu thereof in each instance “Commissioner”.

34. Section 93 of the said Act is amended by striking out “Superintendent” in the second line and inserting in lieu thereof “Commission”.

35. Subsection 94 (2) of the said Act is amended by striking out “Minister” in the first line and in the fifth line and inserting in lieu thereof in each instance “Commissioner”.

36. Section 97 of the said Act and the heading “Penalties” preceding section 97 are repealed.

37.—(1) Clause 98 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) prescribing fees in relation to matters under this Act, including fees for licences and their renewal, for the filing of documents and, for any services provided by or through the Ministry of Financial Institutions or the Commission.

(2) Clause 98 (1) (b) of the said Act is repealed and the following substituted therefor:

- (b) establishing benefits for the purposes of Part VI that must be provided under contracts evidenced by motor vehicle liability policies and establishing terms, conditions, provisions, exclusions and limits related to such benefits;
- (ba) requiring insurers to offer optional benefits in excess of the benefits that must be provided under clause (b) and establishing terms, conditions, provisions, exclusions and limits related to such benefits;
- (bb) prescribing categories of insurers for the purpose of subsection 80 (1), requiring insurers to file a return under that subsection by category and prescribing the information that insurers may solicit from insured persons for purposes of such returns;
- (bc) prescribing categories of insurers for the purpose of subsection 81 (1);
- (bd) prescribing dates for the purpose of clause 81 (1) (a);
- (be) governing the preparation of financial statements required under this Act or the regulations;
- (bf) prescribing the information to be given to applicants or to insured persons under subsection 203b (1) and the circumstances in which it is to be given;
- (bg) establishing requirements that must be met before an insurer declines to issue, terminates or refuses to renew a contract of automobile insurance or refuses to provide or continue any coverage or endorsement in respect thereof;
- (bh) prescribing grounds for which an insurer cannot decline to issue, terminate or refuse to renew a contract of automobile insurance or refuse to provide or continue any coverage or endorsement in respect thereof;
- (bi) prescribing coverages and endorsements for the purposes of section 208b;
- (bj) governing the payment of premiums for automobile insurance in instalments, setting maximum rates of

interest in relation to instalment payments and exempting any insurer, class of insurers or class of policies from statutory condition 1c set out in section 207;

- (bk) exempting any insurer, and exempting any insurer in respect of certain types of contracts of automobile insurance, from section 208a;
- (bl) prescribing rules for determining the degree of fault in various situations for loss or damage arising directly or indirectly from the use or operation of an automobile;
- (bm) providing for and governing indemnification and subrogation where section 230a applies;
- (bn) prescribing any activity or failure to act that constitutes an unfair or deceptive act or practice under subclause 393 (b) (xii) and prescribing requirements that, if not complied with, constitute an unfair or deceptive act or practice;
- (bo) prescribing classes of persons, classes of automobiles and terms, conditions, provisions, exclusions and limits for the purposes of subsection 239b (1);
- (bp) prescribing rules of procedure and setting time-limits in respect of mediation, arbitration, appeal and variation proceedings under sections 242b to 242f;
- (bq) prescribing expenses that may be awarded to insured persons under subsection 242d (11) and setting maximum amounts that may be awarded for such expenses;
- (br) permitting the Director to vary or revoke orders and prescribing rules of procedure and setting conditions and setting time-limits in respect thereof and permitting the Director to proceed by way of a hearing or by way of written submissions.

(3) Subsection 98 (1) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 67, section 8 and 1987, chapter 8, section 3, is further amended by adding thereto the following clauses:

- (fa) prescribing types of contracts of automobile insurance and types of endorsements to contracts of automobile insurance in respect of which sections 369 to 372b apply;
- (fb) prescribing classes of risk exposure to be used by insurers in determining the rates for each coverage and category of automobile insurance;
- (fc) prescribing classes of risk exposure which insurers are prohibited from using in determining the rates for each coverage and category of automobile insurance;
- (fd) prescribing, for the purpose of section 6h, the method of determining the share of an assessment that is payable by an insurer.

38. Subsection 143 (3) of the said Act is amended by striking out “Minister” in the fourth line and inserting in lieu thereof “Commissioner”.

39. Section 201 of the said Act is repealed and the following substituted therefor:

Definitions

201.—(1) In this Part,

“automobile”, includes a motor vehicle required under any Act to be insured under a motor vehicle liability policy;

“contract” means a contract of automobile insurance;

“excluded driver” means a person named as an excluded driver in an endorsement under section 217a;

“fault determination rules” means the rules prescribed under clause 98 (1) (bl);

“insured” means a person insured by a contract whether named or not and includes every person who is entitled to no-fault benefits under the contract whether or not described therein as an insured person;

“no-fault benefits” means the benefits set out in the regulations made under clauses 98 (1) (b) and (ba);

“*No-Fault Benefits Schedule*” means the regulations made under clauses 98 (1) (b) and (ba);

“occupant”, in respect of an automobile, means,

- (a) the driver,
- (b) a passenger, whether being carried in or on the automobile,
- (c) a person getting into or on or getting out of or off the automobile;

“spouse” means either of a man and a woman who,

- (a) are married to each other,
- (b) have together in good faith entered into a marriage, or
- (c) are not married to each other and have cohabited continuously for a period of not less than three years, or have cohabited in a relationship of some permanence if they are the natural or adoptive parents of a child.

(2) A reference to Schedule C in any other Act or in any regulation, contract or other instrument shall be deemed to be a reference to the *No-Fault Benefits Schedule* and a reference to benefits under Schedule C shall be deemed to be a reference to no-fault benefits. Transition

(3) Every contract to which subsection 232 (1) applies shall be deemed to have been amended on the day this subsection comes into force to include no-fault benefits in accordance with the *No-Fault Benefits Schedule*. Idem

(4) The benefits of a person who, before the coming into force of this subsection, was entitled to benefits under Schedule C shall be determined in accordance with this Act as it read immediately before the repeal of Schedule C. Idem

(5) For the purposes of subsections (2) and (4), “Schedule C” means Schedule C to this Act as this Act read before the coming into force of this subsection. Idem

(6) An insurer, with the approval of the Commissioner, may offer optional benefits in excess of the benefits that must be provided under the *No-Fault Benefits Schedule*. Additional benefits

(7) Optional benefits offered under subsection (6) shall be deemed to be no-fault benefits and the *No-Fault Benefits Schedule* applies to them with necessary modifications. Idem

40. The said Act is further amended by adding thereto the following section:

Exception re:
insured

201a. Except as provided in the *No-Fault Benefits Schedule*, the insured under a contract shall be deemed not to include any person who sustains loss or damage while any automobile insured under the contract is being used or operated by an excluded driver.

41.—(1) Subsections 203 (1) and (2) of the said Act are repealed and the following substituted therefor:

Approval of
forms

(1) No insurer shall use a form of policy, endorsement or renewal, a claims form or a continuation certificate in respect of automobile insurance other than a form approved by the Commissioner.

(2) Section 203 of the said Act is amended by striking out “Superintendent” wherever it occurs and inserting in lieu thereof in each instance “Commissioner”.

42. The said Act is further amended by adding thereto the following sections:

Application
form

203a. Where so required by the regulations, no insurer shall use a form of application other than a prescribed form.

OTHER INFORMATION

Information
for
applicants,
etc.

203b.—(1) An insurer shall supply at such times as may be prescribed such information as may be prescribed to applicants for automobile insurance and to named insureds under contracts.

Information
deemed to
be part of
application

(2) Information supplied under subsection (1) by an insurer to an applicant for automobile insurance shall be deemed to be a part of the application.

Information
from brokers

203c. A broker shall provide, on the request of an applicant for insurance, the names of all insurers with whom the broker has an agency contract relating to automobile insurance and all information obtained by the broker relating to quotations on automobile insurance for the applicant.

43.—(1) Subsection 205 (5) of the said Act is amended by striking out “Superintendent” in the third line and inserting in lieu thereof “Commissioner”.

(2) Subsection 205 (7) of the said Act is amended by striking out “Superintendent” in the fourth and fifth lines and inserting in lieu thereof “Commissioner”.

44. Section 206 of the said Act is amended by adding thereto the following subsection:

(1a) Subsection (1) does not invalidate such no-fault benefits as are set out in the *No-Fault Benefits Schedule*.

No-fault
benefits
protected

45.—(1) Subsection 207 (1) of the said Act is amended by striking out “subsection 203 (2), section 208 and section 229” in the first and second lines and inserting in lieu thereof “sections 208 and 229”.

(2) The statutory conditions set out in section 207 of the said Act are amended by adding thereto the following:

**No-Fault
Benefits
Protected**

1a. Despite a failure to comply with statutory condition 1 (1), a person is entitled to such no-fault benefits as are set out in the *No-Fault Benefits Schedule*.

**Refund of
Premium
Overpayment**

1b.—(1) Where the insured has been incorrectly classified with respect to a risk exposure under this contract under the risk classification scheme used by the insurer or that the insurer is required by law to use, the insurer shall make the necessary correction, and shall refund to the insured the amount of any premium overpayment together with interest thereon for the period that the incorrect classification was in effect at the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the incorrect classification was first made rounded to the next highest whole number if the bank rate includes a fraction.

Definition

(2) In this statutory condition, “bank rate” means the bank rate established by the Bank of Canada as the minimum rate at which the Bank of Canada makes short term advances to the banks listed in Schedule I to the *Bank Act* (Canada).

**Monthly
Payments**

1c. Unless otherwise provided by the regulations under the *Insurance Act*, the insured may pay the premium, without penalty, in equal monthly payments totalling the amount of the premium. The insurer may charge interest not exceeding the rate set out in the regulations.

(3) Statutory condition 2 set out in the said section 207 is struck out and the following substituted therefor:

**Authority to
drive**

2.—(1) The insured shall not drive or operate or permit any other person to drive or operate the automobile unless the insured or other person is authorized by law to drive or operate it.

Prohibited use (2) The insured shall not use or permit the use of the automobile in a race or speed test or for any illicit or prohibited trade or transportation.

(4) Statutory condition 3 (1) (a) set out in the said section 207 is amended by striking out “promptly” in the first line and is further amended by striking out “accident” in the last line and inserting in lieu thereof “incident”.

(5) Statutory condition 4 (1) (a) set out in the said section 207 is amended by striking out “promptly” in the first line.

(6) Statutory condition 4 (8) set out in the said section 207 is repealed.

(7) The said statutory conditions are further amended by adding the following:

Time limit 4a. The notice required by statutory conditions 3 and 4 shall be given to the insurer within seven days of the incident but if the insured is unable because of incapacity to give the notice within seven days of the incident, the insured shall comply as soon as possible thereafter.

(8) Statutory condition 6 set out in the said section 207 is repealed and the following substituted therefor:

Time and manner of payment of insurance money 6.—(1) The insurer shall pay the insurance money for which it is liable under this contract within sixty days after the proof of loss has been received by it.

When action may be brought (2) The insured shall not bring an action to recover the amount of a claim under this contract unless the requirements of statutory conditions 3 and 4 are complied with.

Limitation of actions (3) Every action or proceeding against the insurer under this contract in respect of loss or damage to the automobile or its contents shall be commenced within one year next after the happening of the loss and not afterwards, and in respect of loss or damage to persons or other property shall be commenced within two years next after the cause of action arose and not afterwards.

(9) Statutory condition 7 set out in the said section 207 is amended by striking out “named in this contract” in the second and third lines.

46. Subsection 208 (1) of the said Act is amended by striking out “232 or 233” in the last line and inserting in lieu thereof “or 232”.

47. The said Act is further amended by adding thereto the following sections:

208a.—(1) If an insurer does not intend to renew a contract or if an insurer proposes to renew a contract on varied terms, the insurer shall,

Notice of
expiry or
variation

- (a) give the named insured not less than thirty days notice in writing of the insurer's intention or proposal; or
- (b) give the broker, if any, through whom the contract was placed forty-five days notice in writing of the insurer's intention or proposal.

(2) Subject to subsection (4), a broker to whom an insurer has given notice under clause (1) (b) shall give the named insured under the contract not less than thirty days notice in writing of the insurer's intention or proposal.

Idem

(3) Notices given under subsections (1) and (2) shall set out the reasons for the insurer's intention or proposal.

Reasons

(4) Where, before a broker is required to have given notice to a named insured under subsection (2), the broker places with another insurer a replacement contract containing substantially similar terms as the expiring contract, the broker is exempted from giving notice under subsection (2).

Exception

(5) A contract of insurance is in force until there is compliance with subsections (1), (2) and (3).

Effect of
failure to
comply

(6) This section comes into force on a day to be named by proclamation of the Lieutenant Governor.

Coming into
force

208b.—(1) If so required by the regulations and unless the insurer has complied therewith, an insurer shall not decline to issue or terminate or refuse to renew a contract in respect of such coverages and endorsements as may be set out in the regulations or decline to issue, terminate or refuse to renew any contract or refuse to provide or continue any coverage or endorsement on any ground set out in the regulations.

Limitation on
termination

(2) The Commissioner may require insurers, agents and brokers to provide such information, material and evidence as the Commissioner considers necessary to determine compliance with subsection (1).

Information

Exemption (3) An insurer may apply to the Commissioner for an exemption from subsection (1).

Idem (4) An application for an exemption from compliance with subsection (1) shall be in a form approved by the Commissioner and shall be filed together with such information, materials and evidence as the Commissioner considers necessary.

Idem (5) The Commissioner may exempt an insurer in whole or in part from compliance with subsection (1) if, in the opinion of the Commissioner, compliance with the regulations would impair the solvency of the insurer or would cause the insurer to be in contravention of this Act or the regulations.

Non-application (6) Subsection (1) does not apply in respect of a contract if any payment in respect of premiums payable under the contract or under any ancillary agreement is overdue or if,

(a) the insured has given false particulars of the described automobile to the prejudice of the insurer;

(b) the insured has knowingly misrepresented or failed to disclose in an application for insurance any fact required to be stated therein.

Grounds to terminate, etc., filed **208c.**—(1) Every insurer shall file with the Commission a list of the grounds for which the insurer declines to issue, terminates or refuses to renew a contract or for which the insurer refuses to provide or continue a coverage or endorsement.

Information (2) The Commissioner may require insurers, agents and brokers to provide such information, material and evidence as the Commissioner considers necessary to determine the manner in which any ground is applied by the insurer.

Permitted grounds (3) An insurer shall not decline to issue, terminate or refuse to renew a contract or refuse to provide or continue a coverage or endorsement, except on a ground set out in the list filed with the Commission.

Hearing (4) The Commissioner may order, at any time, a hearing with respect to any ground set out in the list filed with the Commission if the Commissioner is of the opinion that the ground or the manner in which it is applied,

(a) is subjective;

(b) is arbitrary;

(c) bears little or no relationship to the risk to be borne by the insurer in respect of an insured; or

(d) is contrary to public policy.

(5) Following a hearing with respect to a ground, the Commissioner, Prohibition

(a) may prohibit an insurer from declining to issue, terminating or refusing to renew any contract or from refusing to provide or continue any coverage or endorsement on that ground; or

(b) may prohibit an insurer from applying that ground, in the manner specified by the Commissioner, to decline to issue, terminate or refuse to renew any contract or refuse to provide or continue any coverage or endorsement.

48.—(1) Subsection 209 (1) of the said Act is repealed and the following substituted therefor:

(1) Subject to section 209a, every contract evidenced by an owner's policy insures the person named therein and every other person who with the named person's consent drives, or is an occupant of, an automobile owned by the insured named in the contract and within the description or definition thereof in the contract against liability imposed by law upon the insured named in the contract or that other person for loss or damage, Coverage of owner's policy, specific automobile

(a) arising from the ownership or directly or indirectly from the use or operation of any such automobile; and

(b) resulting from bodily injury to or the death of any person and damage to property.

(1a) A lack of consent does not invalidate such no-fault benefits as are set out in the *No-Fault Benefits Schedule*. Saving, no-fault benefits

(2) Paragraph 1 of subsection 209 (3) of the said Act is repealed and the following substituted therefor:

1. The spouse of the deceased insured.

49. The said Act is further amended by adding thereto the following section:

Insurer not
liable re:
excluded
driver

209a. If a contract evidenced by a motor vehicle liability policy names an excluded driver, the insurer is not liable to any person under the contract or under this Act or the regulations for any loss or damage that occurs while the excluded driver is driving an automobile insured under the contract, except as provided in the *No-Fault Benefits Schedule*.

50. Clause 210 (a) of the said Act is amended by inserting after “arising” in the first line “directly or indirectly”.

51. Section 214 of the said Act is amended by inserting before “use” in the fourth line “or directly or indirectly from the”.

52. The said Act is further amended by adding thereto the following section:

Excluded
driver
endorsement

217a. A named insured may stipulate by endorsement to a contract evidenced by a motor vehicle liability policy that any person named in the endorsement is an excluded driver under the contract.

53. Subsection 218 (1) of the said Act is amended by inserting after “that” in the third line “except as provided in the *No-Fault Benefits Schedule*”.

54. Subsection 220 (1) of the said Act is amended by inserting after “ownership” in the third line “or directly or indirectly out of the”.

55. The said Act is further amended by adding thereto the following sections:

DIRECT COMPENSATION—PROPERTY DAMAGE

Application

230a.—(1) This section applies if an automobile or its contents, or both, suffers damage arising directly or indirectly from the use or operation in Ontario of any other automobile and both are insured under contracts evidenced by motor vehicle liability policies issued by insurers licensed to undertake insurance in Ontario.

Damage
recovery
from
insured's
insurer

(2) If this section applies, an insured is entitled to recover for the damages to the insured's automobile and its contents and for loss of use from the insured's insurer under the coverage described in subsection 209 (1) as though the insured were a third party.

(3) Recovery under subsection (2) shall be based on the degree of fault of the insurer's insured as determined under the fault determination rules. Idem

(4) An insured may bring an action against the insurer if the insured is not satisfied that the degree of fault established under the fault determination rules accurately reflects the actual degree of fault or the insured is not satisfied with a proposed settlement and the matters in issue shall be determined in accordance with the ordinary rules of law. Dispute resolution

(5) If this section applies, Restrictions on other recovery

(a) an insured has no right of action against any person involved in the incident other than the insured's insurer for damages to the insured's automobile or its contents or for loss of use;

(b) an insurer, except as permitted by the regulations, has no right of indemnification from or subrogation against any person for payments made to its insured under this section.

(6) This section does not affect an insured's right to recover in respect of any physical damage coverage in respect of the insured automobile. Other coverages not affected

(7) This section does not apply to damages to those contents of an automobile that are being carried for reward. Non-application

(8) This section does not apply if the damage occurred before the coming into force of this section. Idem

(9) This section does not apply if both automobiles are owned by the same person. Idem

(10) This section does not apply to damage to an automobile owned by the insured or to its contents if the damage is caused by the insured while driving another automobile. Idem

NOTICE OF DAMAGE

230b.—(1) If an automobile insured under a contract is involved in an incident that is required to be reported to police under the *Highway Traffic Act*, the insured shall give to the insurer written notice, with all available particulars, of the incident. Notice to insurer
R.S.O. 1980, c. 198

Idem (2) Subject to subsection (3), the notice required by subsection (1) shall be given to the insurer within seven days of the incident.

Idem (3) If the insured is unable because of incapacity to comply with subsection (1) within seven days of the incident, the insured shall comply as soon as possible thereafter.

Idem (4) Compliance with this section shall be deemed to be compliance with statutory conditions 3 (1) (a) and 4 (1) (a) set out in section 207.

56.—(1) Clause 231 (2) (b) of the said Act is amended,

(a) by striking out “if residing in the same dwelling premises as the insured” in the first and second lines of sub-subclause (B); and

(b) by striking out “if residing in the same dwelling premises as such person” in the fifth, sixth and seventh lines of sub-subclause (C).

(2) Section 231 of the said Act is amended by adding thereto the following subsection:

Exclusion
from
coverage

(2a) Notwithstanding clause 231 (2) (b), a person who sustains loss or damage while the insured automobile is being used or operated by an excluded driver shall be deemed not to be a person insured under the contract in which the excluded driver is named, except as provided in the *No-Fault Benefits Schedule*.

(3) The said section 231 is further amended by adding thereto the following subsections:

Restriction
on recovery

(5a) No person has a right of action against any other person in respect of damage to an uninsured automobile or its contents arising directly or indirectly from the use or operation of an automobile if at the time of the damage the uninsured automobile was required by any Act to be insured under a contract evidenced by a motor vehicle liability policy.

(4) Subsection 231 (6) of the said Act is repealed and the following substituted therefor:

Release

(6) A release under section 239a does not enure to the benefit of any person against whom the insurer may subrogate under subsection (5).

57. Sections 232, 233 and 234 of the said Act are repealed and the following substituted therefor:

231a.—(1) In respect of loss or damage arising directly or indirectly from the use or operation, after this section comes into force, of an automobile and despite any other Act, none of the owner of an automobile, the occupants of an automobile or any person present at the incident are liable in an action in Ontario for loss or damage from bodily injury arising from such use or operation in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* involving the automobile unless, as a result of such use or operation, the injured person has died or has sustained,

No-fault
principle
established

(a) permanent serious disfigurement; or

(b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

(2) Subsection (1) does not relieve any person from liability other than the owner of the automobile, occupants of the automobile and persons present at the incident.

Idem

(3) In an action for loss or damage from bodily injury arising directly or indirectly from the use or operation of an automobile, a judge shall, on motion made before or at trial, determine if the injured person has, as a result of the accident, died or has sustained,

Judicial
determination

(a) permanent serious disfigurement; or

(b) permanent serious impairment of an important bodily function caused by continuing injury which is physical in nature.

(4) Even though a defence motion under subsection (3) is denied, the defendant may, at trial, in the absence of the jury, and following the hearing of evidence, raise the defence provided in subsection (1).

Idem

(5) In a proceeding involving a plaintiff who cannot recover against the owner of an automobile, the occupant of an automobile or a person present at the incident because of the operation of subsection (1), a defendant is not liable for damages caused by any person who is excluded from liability because of the operation of subsection (1) and is not liable to contribute or indemnify in respect of such damages.

Joint and
several
liability,
joint
tort-feasors

Idem

(6) For the purposes of subsection (5), the proportion of liability of all persons involved in the incident from which the proceeding arose shall be determined as though all persons wholly or partly responsible for the loss or damage were parties to the proceeding even though any such person is not actually a party.

Definition

R.S.O. 1980,
c. 198

(7) For the purposes of this section, “owner” includes an operator as defined in subsection 15a (1) of the *Highway Traffic Act*.

Collateral
source rule
not to apply

231b.—(1) The damages awarded to a person in a proceeding for loss or damage arising directly or indirectly from the use or operation of an automobile shall be reduced by,

- (a) all payments that the person has received or that were or are available for no-fault benefits and by the present value of any no-fault benefits to which he or she is entitled;
- (b) all payments that the person has received under any medical, surgical, dental, hospitalization, rehabilitation or long-term care plan or law and by the present value of such payments to which he or she is entitled;
- (c) all payments that the person has received or that were or are available for loss of income under the laws of any jurisdiction or under an income continuation benefit plan and by the present value of any such payments to which he or she is entitled; and
- (d) all payments that the person has received under a sick leave plan arising by reason of the person's occupation or employment.

Exception

R.S.O. 1980,
c. 505

(2) Payments or benefits received or that were, are or may become available to a person under the *Workers' Compensation Act* shall not be applied under subsection (1) to reduce the damages awarded.

Idem

(3) A reduction made under subsection (1) does not apply for the purpose of determining a person's entitlement to compensation under subsection 8 (2) of the *Workers' Compensation Act*.

Limitation on
subrogation

(4) A person who has made a payment or who has a liability to pay a benefit described in clause (1) (a), (b), (c) or (d) is not subrogated to a right of recovery of the insured against another person in respect of that payment or benefit.

(5) The Workers' Compensation Board is not subrogated to a right of recovery of the insured against another person in respect of a payment or benefit paid by the Workers' Compensation Board to the insured or in respect of a liability to make such payment or benefit. Idem

(6) This section applies to damages awarded for loss or damage arising directly or indirectly from the use or operation, after the 23rd day of October, 1989, of an automobile. Application

232.—(1) Every contract evidenced by a motor vehicle liability policy shall provide for the no-fault benefits set out in the *No-Fault Benefits Schedule*, subject to the terms, conditions, provisions, exclusions and limits set out in that Schedule. No-fault
benefits

(2) The following rules apply for determining who is liable to pay no-fault benefits: Liability to
pay

1. In respect of an occupant of an automobile,
 - i. the occupant has recourse against the insurer of an automobile in respect of which the occupant is an insured,
 - ii. if recovery is unavailable under subparagraph i, the occupant has recourse against the insurer of the automobile in which he or she was an occupant,
 - iii. if recovery is unavailable under subparagraph i or ii, the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to no-fault benefits arose,
 - iv. if recovery is unavailable under subparagraph i, ii or iii, the occupant has recourse against the Motor Vehicle Accident Claims Fund.
2. In respect of non-occupants,
 - i. the non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an insured,
 - ii. if recovery is unavailable under subparagraph i, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,

- iii. if recovery is unavailable under subparagraph i or ii, the non-occupant has recourse against the insurer of any automobile involved in the incident from which the entitlement to no-fault benefits arose,
- iv. if recovery is unavailable under subparagraph i, ii or iii, the non-occupant has recourse against the Motor Vehicle Accident Claims Fund.

Liability

(3) An insurer against whom a person has recourse for the payment of no-fault benefits is liable to pay the benefits.

Choice of insurer

(4) If, under subparagraph i or iii of paragraph 1 or subparagraph i or iii of paragraph 2 of subsection (2), a person has recourse against more than one insurer for the payment of no-fault benefits, the person, in his or her absolute discretion, may decide the insurer from which he or she will claim the benefits.

Idem

(5) Despite subsection (4), if a person is a named insured under a contract evidenced by a motor vehicle liability policy or the person is the spouse or a dependant, as defined in the *No-Fault Benefits Schedule*, of a named insured, the person shall claim no-fault benefits against the insurer under that policy and, if there is more than one such policy, the person, in his or her discretion, may decide the insurer from which he or she will claim the benefits.

Excess insurance

(6) The insurance mentioned in subsection (1) is excess insurance to any other insurance not being automobile insurance of the same type indemnifying the injured person or in respect of a deceased person for the expenses.

Idem

(7) The insurance mentioned in subsection (1) is excess insurance to any other insurance indemnifying the injured person or in respect of a deceased person for the expenses.

Payments pending dispute resolution

(8) Where the *No-Fault Benefits Schedule* provides that the insurer will pay a particular no-fault benefit pending resolution of any dispute between the insurer and an insured, the insurer shall pay the benefit until the dispute is resolved.

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Particulars of insurance

234.—(1) A person who is entitled to no-fault benefits or his or her personal representative is entitled to particulars as to whether the owner or operator of any automobile against

whom the person may have a claim has insurance that provides for no-fault benefits and the name of the insurer, if any.

(2) The person or his or her personal representative may demand the particulars described in subsection (1) by registered mail from the owner or operator of the automobile or the insurer, if any, of either of them. Demand for particulars

(3) Every owner, operator and insurer shall comply with a demand under subsection (2) within ten days of receiving the demand. Reply

58. Section 235 of the said Act is amended by striking out “232 or 233” in the second line and inserting in lieu thereof “or 232”.

59. Section 236 of the said Act is repealed.

60. Subsection 237 (1) of the said Act is amended by striking out “232 or 233” in the second line and inserting in lieu thereof “or 232”.

61. Section 238 of the said Act is repealed and the following substituted therefor:

238.—(1) Every proceeding against any insurer under a contract in respect of insurance provided under section 231 must be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than two years after the happening of the accident. Limitation of action

(2) Every proceeding against any insurer under a contract in respect of insurance provided under section 232 must be commenced within the limitation period specified in the contract, but in no event shall the limitation period be less than the period described in subsection 242c (5). Idem

62. Subsection 239 (2) of the said Act is repealed.

63. The said Act is further amended by adding thereto the following sections:

239a. Payments made or available to a person under the *No-Fault Benefits Schedule* constitute, to the extent of such payments, a release by the person, the person's personal representative, the person's insurer or any one claiming through or under the person or by virtue of Part V of the *Family Law Act, 1986* of any claim under subsection 231 (1) or 232 (1). Release 1986, c. 4

Indemnifi-
cation in
certain cases

239b.—(1) The insurer responsible under subsection 232 (2) for the payment of no-fault benefits to such classes of persons as may be named in the regulations is entitled, subject to such terms, conditions, provisions, exclusions and limits as may be prescribed, to indemnification in relation to such benefits paid by it from the insurers of such class or classes of automobiles as may be named in the regulations involved in the incident from which the responsibility to pay the no-fault benefits arose.

Idem

(2) Indemnification under subsection (1) shall be made according to the respective degree of fault of each insurer's insured as determined under the fault determination rules.

Deductible

(3) No indemnity is available under subsection (2) in respect of the first \$2,000 of no-fault benefits paid in respect of a person described in that subsection.

Arbitration

(4) If the insurers are unable to agree with respect to indemnification under this section, the dispute shall be resolved through arbitration under the *Arbitrations Act*.

R.S.O. 1980,
c. 25

Stay of
arbitration
proceedings

(5) No arbitration hearing shall be held with respect to indemnification under this section if there is an unsettled claim against any of the insurers by an insured in respect of the incident for which indemnification is sought.

64.—(1) Subsection 241 (1) of the said Act is amended by inserting after “ownership” in the fourth line “or directly or indirectly with the”.

(2) Subsection 241 (2) of the said Act is amended by striking out “232 and 233” in the first line and inserting in lieu thereof “and 232”.

65. The said Act is further amended by adding thereto the following sections:

DISPUTE RESOLUTION—NO-FAULT BENEFITS

Dispute
resolution,
procedure to
be followed

242a.—(1) Disputes in respect of any insured person's entitlement to no-fault benefits or in respect of the amount of no-fault benefits to which an insured person is entitled shall be resolved in accordance with sections 242b to 242e and the *No-Fault Benefits Schedule*.

No opting
out

(2) Any restriction on a party's right to mediate, litigate, arbitrate, appeal or apply to vary an order as provided in sections 242b to 242f is void except where the restriction forms part of a settlement.

(3) For the purposes of this section and sections 242b to 242f, “insured person” includes a person who is claiming funeral expenses or a death benefit under the *No-Fault Benefits Schedule*. Definition

(4) The Director and every arbitrator shall determine issues before them by order and may make an order subject to such conditions as are set out in the order. Orders

(5) If an insurer or an insured is represented in any mediation, arbitration, appeal or variation proceeding under sections 242b to 242f, the mediator, arbitrator or Director, as the case may be, may adjourn the proceeding, with or without conditions, if the representative is not authorized to bind the party he or she represents. Power to bind parties

242b.—(1) Either the insured person or the insurer may refer to a mediator any matter in dispute in respect of the insured person’s entitlement to no-fault benefits or in respect of the amount of no-fault benefits to which the insured person is entitled. Mediation

(2) The party seeking mediation shall file an application for the appointment of a mediator with the Commission. Starting the process

(3) The Director shall ensure that a mediator is appointed promptly. Mediator’s appointment

(4) The mediator shall enquire into the issues in dispute and attempt to effect a settlement of as many of the issues as possible within the time prescribed in the regulations for the settlement of the type of dispute in question. Mediation

(5) The parties may by agreement extend the time for the completion of the mediation process, even if the time for completion has expired. Extension of time

(6) If at any time before a settlement is effected the mediator is of the opinion that mediation will fail, he or she shall forthwith notify the parties. Notice of failure

(7) Mediation has failed when the mediator has given notice to the parties that in his or her opinion mediation will fail, or when the prescribed or agreed time for mediation has expired and no settlement has been reached. Idem

(8) If mediation fails, the mediator, in addition to any notice required to be given, shall prepare and give to the parties a report setting out the insurer’s last offer and the mediator’s description of the issues that remain in dispute. Idem

Litigation or
arbitration

242c.—(1) If mediation fails, the insured person may bring a proceeding in a court of competent jurisdiction or may refer the matter to an arbitrator.

Limitation

(2) No person may bring a proceeding in any court or refer a matter to arbitration unless mediation has first been sought and has failed.

Payment
pending
dispute
resolution

(3) Subject to subsection (4), if mediation fails, the insurer shall pay no-fault benefits in accordance with the last offer of settlement that it had made before the failure until otherwise agreed by the parties or until otherwise ordered by a court, an arbitrator or the Director.

Idem

(4) If a dispute involves a no-fault benefit that the insurer is required to pay under subsection 232 (8) and the insured has not commenced a proceeding in a court or an arbitration proceeding within forty-five days after the day mediation failed, the insurer shall pay the insured in accordance with the last offer made by the insurer before the failure until otherwise agreed by the parties or until otherwise ordered by a court, an arbitrator or the Director.

Limitation
period

(5) A proceeding in a court or an arbitration proceeding in respect of no-fault benefits must be commenced within two years after the insurer's refusal to pay the benefit claimed or within such longer period as may be provided in the *No-Fault Benefits Schedule*.

Arbitration,
starting the
process

242d.—(1) An insured person seeking arbitration shall file an application for the appointment of an arbitrator with the Commission.

Arbitrator's
appointment

(2) The Director shall ensure that an arbitrator is appointed promptly.

Settlement of
issues

(3) The arbitrator shall determine all issues in dispute and such other issues as the parties may agree.

Procedures

(4) The arbitration shall be conducted in accordance with the procedures and within the time-limits set out in the regulations.

Questions

(5) The Director, on the recommendation of an arbitrator, shall refer to the chair of the medical and rehabilitation advisory panel any question related to the medical condition or treatment of the insured person or related to the insured person's rehabilitation.

(6) The chair of the medical and rehabilitation advisory panel shall refer the question to one or more persons (referred to in this section as advisors) who he or she considers qualified to conduct a medical or rehabilitation assessment, as the case may be.

Advisors

(7) Advisors may advise and report to the arbitrator on any question before them on the basis of the evidence before the arbitrator and they may require the insured person to submit, at the expense of the insurer, to such medical or rehabilitation assessments as they may require.

Idem

(8) Reports prepared by advisors shall be delivered to the arbitrator and the parties.

Transmittal of reports

(9) Except with the permission of the insured person, no person shall use or provide copies of, or release information from, any report prepared by an advisor other than for the purpose of determining the claim in respect of which the arbitration was undertaken.

Use of reports

(10) If the arbitrator finds that an insurer has unreasonably withheld or delayed payments, the arbitrator, in addition to awarding the benefits and interest to which an insured person is entitled under the *No-Fault Benefits Schedule*, shall award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*.

Special award

(11) The arbitrator may award to the insured person such expenses incurred in respect of an arbitration proceeding as may be prescribed in the regulations to the maximum set out in the regulations.

Expenses

(12) A party may apply to the Director for the appointment of a new arbitrator if the party believes that the arbitrator is biased and the Director shall determine the issue.

Bias

(13) The arbitrator, forthwith upon making a decision in an arbitration, shall deliver a copy of his or her order together with the reasons therefor to the insured person, the insurer and the Director.

Copies of decision

(14) At the request of the insured person, the Director shall file a copy of the arbitrator's order in the Supreme Court and the order shall be entered and be enforceable in the same way as a judgment or order of the court.

Enforcement

- Idem (15) The method of enforcement set out in subsection (14) is in addition to any other method of enforcement set out in this Act.
- Non-application of R.S.O. 1980, c. 25 (16) The *Arbitrations Act* does not apply to arbitrations under this section.
- Appeal **242e.**—(1) A party to an arbitration may appeal the order of the arbitrator to the Director.
- Notice of appeal (2) A notice of appeal shall be in writing and shall be delivered to the Commission within thirty days after the date of the arbitrator's order and the appellant shall serve the notice on the respondent.
- Extension of time (3) The Director may extend the time for requesting an appeal, either before or after the thirty days, if the Director is satisfied that there are apparent grounds for granting relief to the person and that there are reasonable grounds for applying for the extension, and the Director may give such directions as he or she considers proper consequent upon the extension.
- Nature of hearing (4) The Director may determine the appeal on the record or by way of a rehearing of all the issues before the arbitrator or partly on the record and partly by way of rehearing as the Director in his or her opinion may decide.
- Power of the Director (5) Upon hearing an appeal, the Director may confirm, vary or rescind the order appealed from or substitute his or her order for that of the arbitrator.
- Order not stayed (6) An appeal does not stay the order of the arbitrator unless the Director decides otherwise.
- Medical reports, special awards, expenses (7) Subsections 242d (5) to (11) apply with necessary modifications to appeals before the Director.
- Interventions (8) The Director may permit persons who are not parties to the appeal to make submissions on issues of law arising in an appeal.
- Enforcement (9) At the request of the insured person, the Director shall file a copy of his or her order in an appeal under this section in the Supreme Court and the order shall be entered and be enforceable in the same way as a judgment or order of the court.

(10) The method of enforcement set out in subsection (9) is in addition to any other method of enforcement set out in this Act. Idem

242f.—(1) Either the insured person or the insurer may apply to the Director to vary or revoke an order made by an arbitrator or the Director. Application for variation

(2) If an application is made to vary or revoke an arbitrator's order, the Director may decide the matter or he or she may appoint the same arbitrator or some other arbitrator to determine it. Idem

(3) If the arbitrator or Director is satisfied that there has been a material change in the circumstances of the insured or that evidence not available on the arbitration or appeal has become available or that there is an error in the order, the arbitrator or Director may vary or revoke the order and may make a new order if he or she considers it advisable to do so. Powers on variation

(4) An order made, varied or revoked under subsection (3) may be prospective or retroactive. Idem

242g.—(1) The Director may state a case in writing for the opinion of the Divisional Court upon any question that, in his or her opinion, is a question of law. Stated case

(2) The Divisional Court shall hear and determine the stated case. Idem

242h. An arbitrator cannot vary or revoke an order made by him or her and cannot make a new order to replace an order made by him or her if the order is under appeal. When arbitrator cannot act

242i. An insurer shall not, after an order of the Director or of an arbitrator, reduce benefits to an insured person on the basis of an alleged change of circumstances, alleged new evidence or an alleged error, unless the insured person agrees or unless the Director or an arbitrator so orders in a variation or appeal proceeding under section 242e or 242f. Protection of benefits

242j. The Director shall review arbitration orders and may recommend to the Superintendent that the Superintendent investigate the business practices of an insurer if the Director is of the opinion that any arbitration or appeal from an arbitration reveals unfair or deceptive business practices. Finding of possible unfair or deceptive business practice

CHANGES TO NO-FAULT BENEFITS SCHEDULE

Reports to
the Assembly

242k. At least once every two years, the Minister shall table a report before the Assembly in respect of the adequacy of no-fault benefits and setting out changes made to the *No-Fault Benefits Schedule* since the last report and changes that are proposed to the *No-Fault Benefits Schedule* at the time of the report.

66. Subsection 299 (4) of the said Act is repealed.

67. Subsection 303 (4) of the said Act is repealed and the following substituted therefor:

Exception

(4) This section is subject to any rules to the contrary certified by and filed with the Superintendent under this Part.

68. Subsection 308 (1) of the said Act is amended by striking out “prescribe” in the last line and inserting in lieu thereof “require”.

69.—(1) Subsection 309 (1) of the said Act is amended by striking out “Minister” in the last line and inserting in lieu thereof “Commissioner”.

(2) Subsection 309 (2) of the said Act is repealed and the following substituted therefor:

Request by
Commis-
sioner

(2) If, after considering the report, the Commissioner agrees with the Superintendent, the Commissioner shall require the society to make, within the specified time but not exceeding four years, such increase in its rates of contribution or such reduction in the benefits payable under its contracts of insurance or otherwise as will enable the society to provide for the payment of its contracts of insurance at maturity.

(3) Subsection 309 (4) of the said Act is amended by striking out “Minister” in the fourth line and inserting in lieu thereof “Commissioner”.

70. Section 310 of the said Act is amended by striking out “Minister” in the seventh line and inserting in lieu thereof “Commissioner”.

71. Subsection 311 (1) of the said Act is amended by striking out “Minister” in the second line and in the fourth line and inserting in lieu thereof in each instance “Commissioner”.

72. Subsection 322 (1) of the said Act is amended by striking out “Minister” in the tenth line and inserting in lieu thereof “Commissioner”.

73. Subsection 325 (2) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

74. Sections 369 to 372 of the said Act are repealed and the following substituted therefor:

369.—(1) Every insurer shall apply to the Commissioner for approval of, Application re classes, rates

(a) the classes of risk exposure it intends to use in determining the rates for each coverage and category of automobile insurance; and

(b) the rates it intends to use for each coverage and category of automobile insurance.

(2) An insurer is not required to apply for approval of such classes of risk exposure as insurers may be required by regulation to use. Exception

(3) An application for approval of classes of risk exposure or rates shall be in a form approved by the Commissioner and shall be filed together with such information, material and evidence as the Commissioner may specify. Material to be furnished

(4) The Commissioner may require an applicant to provide such information, material and evidence as the Commissioner considers necessary in addition to the information, material and evidence required to be provided in or with the application. Additional information

(5) An application shall be deemed to have been approved by the Commissioner sixty days after it is filed unless the Commissioner within that sixty-day period advises the applicant orally or otherwise that he or she has not approved the application. Approval

(6) The Commissioner may approve the application before the expiry of the sixty-day period. Idem

(7) The Commissioner may extend the period for approval for a period not exceeding sixty days. Extension of time

(8) If the Commissioner notifies an applicant orally that he or she has not approved an application, the Commissioner Notice

shall promptly mail a written notice to the applicant confirming that fact.

Hearing

(9) If the Commissioner notifies an applicant that he or she has not approved an application, the Commissioner shall hold a hearing.

Hearing,
public
interest

(10) The Commissioner shall not approve an application if the Commissioner considers that it is in the public interest to hold a hearing on the application.

Refusal to
approve

(11) The Commissioner shall refuse to approve an application if the Commissioner considers that the proposed classes of risk exposure or rates are not just and reasonable in the circumstances.

Idem

(12) The Commissioner shall refuse to approve an application respecting proposed classes of risk exposure that the Commissioner considers,

(a) are not reasonably predictive of risk; or

(b) do not distinguish fairly between classes of risk exposure.

Idem

(13) The Commissioner shall refuse to approve an application respecting proposed rates that the Commissioner considers would impair the solvency of the applicant or are excessive in relation to the financial circumstances of the insurer.

Relevant
information

(14) In deciding upon an application, the Commissioner may take into account financial and other information and such other matters as may directly or indirectly affect the applicant's proposed rates or the applicant's ability to underwrite insurance for the proposed classes of risk exposure.

Powers of
the Commis-
sioner

(15) Following a hearing, the Commissioner may approve or refuse to approve the application or may vary the classes of risk exposure or the rates, and the approval may be subject to such conditions or restrictions as the Commissioner considers appropriate in the circumstances.

Definition

(16) In this section, "insurer" includes the Facility Association.

Exemptions
from
approval
process

370.—(1) The Commissioner may exempt insurers, other than the Facility Association, from making an application under section 369 in respect of designated categories or coverages of automobile insurance.

(2) An insurer shall file the classes of risk exposure and rates it intends to use for the exempted categories or coverages of automobile insurance in a form approved by the Commissioner. Filing

(3) An insurer may use the classes of risk exposure or rates filed under this section thirty days after filing them. Effective date

(4) If the Commissioner revokes an exemption, insurers are required to apply within thirty days after the revocation for approval under section 369 of the classes of risk exposure and rates it is using for the categories or coverages of automobile insurance affected by the revocation. Revocation of exemption

(5) An insurer may continue to use the classes of risk exposure and rates filed before the Commissioner revoked the exemption until the insurer's application under subsection (4) is determined. Idem

371.—(1) The Commissioner may require that affiliated insurers who write automobile insurance in Ontario file their applications under section 369 or 370 concurrently. Applications by affiliates

(2) The Commissioner may consider the classes of risk exposure and the rates of the affiliates of an insurer when deciding upon the insurer's application. Idem

(3) For the purpose of this section, an insurer is considered to be affiliated with another insurer if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person. Interpretation

372.—(1) Despite any approval or exemption under section 369 or 370, the Commissioner may, at any time, order a hearing with respect to any classes of risk exposure or rates for any coverage or category of automobile insurance of an insurer if the Commissioner is of the opinion that, Reconsideration

- (a) the classes of risk exposure or rates are not just and reasonable in the circumstances;
- (b) the classes of risk exposure are not reasonably predictive of risk or do not distinguish fairly between classes of risk exposure; or
- (c) the rates would impair the solvency of the insurer or are excessive in relation to the financial circumstances of the insurer.

Variation	(2) Following a hearing, the Commissioner may vary the classes of risk exposure the insurer may use or the rates it may charge.
Deemed approval	(3) For the purposes of section 372b, classes and rates varied under subsection (2) shall be deemed to be classes and rates approved by the Commissioner.
Policy statements	372a. —(1) The Minister may issue policy statements on matters related to coverages or categories of automobile insurance, classes of risk exposure and automobile insurance rates.
When effective	(2) A policy statement takes effect on the day it is published in <i>The Ontario Gazette</i> .
Effect of statement	(3) The Commissioner shall have regard to the policy statements issued under this section in making decisions under this Part.
Prohibition, classes	372b. —(1) No insurer shall use a class of risk exposure in determining a rate for a coverage or category of automobile insurance that is not approved by the Commissioner or authorized under section 370 or by regulation.
Idem, rates	(2) No insurer shall use a rate for a coverage or category of automobile insurance that is not approved by the Commissioner or authorized under section 370.
Definition	(3) In this section, “insurer” includes the Facility Association.
Coming into force	(4) This section comes into force on a day to be named by proclamation of the Lieutenant Governor.

75.—(1) Clause 388 (8) (g) of the said Act is amended by striking out “Minister” in the first line and inserting in lieu thereof “Commissioner”.

(2) Subsection 388 (8a) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 8, section 8, is amended by striking out “Minister” in the second line and inserting in lieu thereof “Commissioner”.

76.—(1) Clause 393 (a) of the said Act, as amended by the Statutes of Ontario, 1986, chapter 70, section 32, is repealed and the following substituted therefor:

- (a) “person” includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society

known as Lloyd's, fraternal society, mutual benefit society or syndicate.

(2) Clause 393 (b) of the said Act is amended,

- (a) by striking out “in the business of insurance” in the first and second lines;**
- (b) by striking out “or” at the end of subclause (viii); and**
- (c) by striking out subclause (ix) and inserting in lieu thereof:**
 - (ix) any conduct resulting in unreasonable delay or resistance to the fair adjustment and settlement of claims,
 - (x) making the issuance or variation of a policy of automobile insurance conditional upon the purchase by the insured of another insurance policy,
 - (xi) when rating a person or a vehicle as an insurance risk for the purpose of determining the premium payable for a policy of automobile insurance, misclassifying the person or vehicle under the risk classification system used by the insurer or that the insurer is required by law to use, or
 - (xii) any activity or failure to act that is prescribed as an unfair or deceptive act or practice.

77. Section 394 of the said Act is repealed and the following substituted therefor:

394. No person shall engage in any unfair or deceptive act or practice. Prohibition

78. Sections 396 and 397 of the said Act are repealed and the following substituted therefor:

396.—(1) If, in the opinion of the Superintendent, a person is committing any act or pursuing any course of conduct that is an unfair or deceptive act or practice or might reasonably be expected to result in a state of affairs that would constitute an unfair or deceptive act or practice, the Superintendent may give notice to the person of the Superintendent's intention to order the person, Superintendent's orders

- (a) to cease or refrain from doing any act or pursuing any course of conduct identified by the Superintendent;
- (b) to cease engaging in the business of insurance or any aspect of the business of insurance specified by the Superintendent; or
- (c) to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

Hearing

(2) A person, by written notice served on the Superintendent within fifteen days after the service of the notice under subsection (1), may require a hearing before the Superintendent.

Interim order

(3) Notwithstanding subsection (2), where, in the opinion of the Superintendent, the interests of the public may be prejudiced or adversely affected by any delay in the issuance of a permanent order, the Superintendent, without prior notice, may make an interim order as described in clause (1) (a), (b) or (c) which shall take effect immediately on its making, and which shall become permanent on the fifteenth day after its making unless within that time a hearing before the Superintendent is requested.

When order
may be made

(4) If no hearing is requested within the time set out in subsection (2) or (3), or if a hearing is held and the Superintendent is of the opinion that an order described in clause (1) (a), (b) or (c) should be made, the Superintendent may make a permanent order under any of those clauses which shall take effect immediately on its making or at such later date as may be set out in the order.

Hearing

(5) A request for a hearing under subsection (3) shall be in writing and served on the Superintendent.

Extension of
order

(6) If a hearing is requested under subsection (3), the Superintendent may extend the temporary order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

Modification
or revocation

(7) The Superintendent may, after giving the person named in the order an opportunity to be heard, modify or, without holding a hearing, revoke an order made under this section.

79. The said Act is further amended by adding thereto the following Part:

PART XX

EXAMINATION AND ENFORCEMENT

407. In this Part, “examination” means examination, inquiry, appraisal, audit or inspection under this Act. Definition

408.—(1) It is a condition of the licensing of a person that the person facilitate examinations. Examinations, general

(2) For the purpose of an examination, the insurer, agent or adjuster shall prepare and submit to the person conducting the examination such statements or returns with respect to the insurer's, agent's or adjuster's business, finances or other affairs, in addition to the statements or returns mentioned in this Act, as the Superintendent may require. Material to be furnished

(3) The officers, agents and employees of an insurer, agent or adjuster shall open the books for inspection and shall otherwise facilitate an examination under this Act so far as it is in their power. Duty of officers, etc.

(4) In order to facilitate an examination of the books and records of an insurer, agent or adjuster, the Superintendent or a person designated by the Commissioner may require the insurer, agent or adjuster to produce the books and records at his, her or its principal place of business in Ontario, or at such other convenient place as the Superintendent may direct. Production of books

(5) On the direction of the Superintendent or a person designated by the Commissioner, if an examination of an insurer is made at an office situate outside Ontario, the insurer shall pay the costs and expenses of the examination. Expense of further examination

409.—(1) A person conducting an examination, for the purpose of carrying out that person's duties, Powers of examination, etc.

- (a) may enter any place at any reasonable time;
- (b) may require the production for inspection of documents or things that may be relevant to the carrying out of the duties;
- (c) upon giving a receipt therefor, may remove from a place documents or things produced pursuant to a request under clause (b) for the purpose of making copies or extracts and shall return them within a reasonable time to the person who produced them; and

- (d) may question a person on matters that are or may be relevant to the carrying out of the examination.

Entry to
dwellings

(2) No person may exercise a power of entry conferred by this Act to enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Warrant for
search

(3) Where a justice of the peace is satisfied on information upon oath that there are in a place documents or things that there are reasonable grounds to believe will afford evidence relevant to the carrying out of an examination under this Act, the justice of the peace may issue a warrant authorizing the person named in the warrant to search the place for any such documents or things and to remove them for the purposes of making copies or extracts and they shall be returned promptly to the place from which they were removed.

Warrant for
entry

(4) Where a justice of the peace is satisfied on information upon oath that there are reasonable grounds to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered so that a person may carry out an examination, the justice of the peace may issue a warrant authorizing such entry by the person named in the warrant.

Execution
and expiry of
warrant

(5) A warrant issued under subsection (3) or (4),

- (a) shall specify the hours and days during which it may be executed; and
- (b) shall name a date on which it expires, which date shall not be later than fifteen days after its issue.

Obstruction

(6) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede a person carrying out an examination.

Idem

(7) Subsection (6) is not contravened where a person refuses to produce documents or things, unless a warrant has been issued under subsection (3).

Admissibility
of copies

(8) Copies of, or extracts from, documents and things removed from premises under this Act and certified by the person who made the copies as being true copies of, or extracts from, the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

410.—(1) An auditor shall promptly report to the insurer and to the Superintendent any breach of this Act of which the auditor is aware or is made aware under subsection (2) and, if the insurer does not act to rectify the breach within thirty days, the auditor shall promptly report the failure to rectify to the Superintendent.

Reporting by
auditor

(2) Any person undertaking professional services for an insurer who, in providing the professional services, becomes aware of a breach of this Act shall promptly report the breach to the insurer and the auditor of the insurer or, if there is no auditor, to the Superintendent.

Reporting by
others

(3) Nothing in this section abrogates any privilege that may exist between a solicitor and the solicitor's client.

Solicitor-
client
privilege

411. A person who in good faith makes an oral or written statement or disclosure to the Commissioner, the Superintendent, an employee of the Commission or any other person acting under the authority of this Act that is relevant to the duties of the person to whom the statement or disclosure is made shall not be liable in any civil action arising out of the making of the statement or disclosure.

No liability

412.—(1) In this section, "person" includes an individual, corporation, association, partnership, organization, reciprocal or inter-insurance exchange, member of the society known as Lloyd's, fraternal society, mutual benefit society or syndicate.

Definition

(2) Every person is guilty of an offence who,

Offences

- (a) directly or indirectly furnishes false, misleading or incomplete information to the Commission whether the information is required under this Act or is volunteered;
- (b) fails to comply with any requirement of, or any order or direction made under, this Act;
- (c) fails to comply with any written undertaking given to the Commissioner or the Superintendent;
- (d) contravenes this Act or the regulations; or
- (e) contravenes any term, condition or restriction imposed by a licence.

(3) On conviction for an offence under this Act, the person convicted is liable on a first conviction to a fine of not more

Penalty

than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000.

Derivative

(4) Every director, officer and chief agent of a corporation and every person acting in a similar capacity or performing similar functions in an unincorporated association who,

- (a) caused, authorized, permitted or participated in the corporation or unincorporated association committing an offence referred to in subsection (2); or
- (b) failed to take reasonable care to prevent the corporation or unincorporated association from committing an offence referred to in subsection (2),

is guilty of an offence and is liable on a first conviction to a fine of not more than \$100,000 and on each subsequent conviction to a fine of not more than \$200,000, whether or not the corporation or unincorporated association has been prosecuted for or convicted of the offence.

Restitution

(5) Where a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

Order for compliance

413.—(1) If it appears to the Superintendent that any person has failed to comply with or is not complying with,

- (a) any order, decision, direction or inquiry made under this Act;
- (b) any undertaking given; or
- (c) any term, condition or restriction imposed on its licence, where applicable,

the Superintendent may, in addition to any other rights under this Act, apply to a judge of the High Court for an order directing the person to comply with or restraining the person from violating the order, decision, direction, inquiry, undertaking, term, condition or restriction, and the judge may make such order as the judge considers appropriate.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1).

Limitation period

414. No proceeding for an offence under this Act may be commenced more than two years after the earlier of the date

on which the facts upon which the proceedings are based first came to the knowledge of the Commissioner or the Superintendent.

80. Schedule C to the said Act is repealed.

81. The *Automobile Insurance Rates Control Act, 1989*, being chapter 34, is repealed.

82.—(1) Subclause 1 (c) (ii) of the *Compulsory Automobile Insurance Act*, being chapter 83 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (ii) provides the no-fault benefits set out in the *No-Fault Benefits Schedule* under the *Insurance Act*. R.S.O. 1980,
c. 218

(2) Section 1 of the said Act is amended by adding thereto the following clause:

- (ca) “Commissioner” means the commissioner of insurance under the *Insurance Act*. R.S.O. 1980,
c. 218

(3) Clause 1 (n) of the said Act is repealed.

(4) Section 1 of the said Act is amended by adding thereto the following subsections:

(2) An electric streetcar that runs on rails principally on a highway shall be deemed to be a motor vehicle for the purposes of this Act. Streetcars

(3) Notwithstanding that a motor vehicle is insured under a contract of automobile insurance, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the *Insurance Act* with respect to that contract unless the excluded driver is a named insured under another contract of automobile insurance. Exception re:
excluded
driver

R.S.O. 1980,
c. 218

(5) The said Act is amended by striking out “Superintendent” wherever it occurs and inserting in lieu thereof in each instance “Commissioner”.

(6) Section 3 of the said Act is amended by adding thereto the following subsection:

(1a) Despite subsection (1), an operator of a motor vehicle who is named as an excluded driver under the contract of Excluded
driver to
carry
insurance
card

automobile insurance under which the vehicle is insured shall have in the vehicle at all times an insurance card evidencing that the operator is a named insured under another contract of automobile insurance, and the operator shall surrender the insurance card for reasonable inspection upon the demand of a police officer.

(7) Subsection 3 (2) of the said Act is amended by striking out “subsection (1)” in the first line and inserting in lieu thereof “this section”.

(8) Subsection 10 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 18, section 32, is repealed and the following substituted therefor:

Idem

(4) Rates prepared under subsection (3) do not come into effect until approved under section 369 of the *Insurance Act*.

83. Section 66 of the *Corporations Tax Act*, being chapter 97 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

Exception

R.S.O. 1980,
c. 218

(1a) Clause (1) (b) does not apply in respect of a contract of automobile insurance within the meaning of the *Insurance Act* unless the automobile insured by the policy is,

- (a) an ambulance or funeral vehicle;
- (b) a bus, limousine or taxi or other vehicle that carries passengers for reward or as part of a transportation service;
- (c) a fire department or police vehicle;
- (d) a driver training vehicle;
- (e) a vehicle rented for a period of less than thirty days;
- (f) a vehicle used primarily to transport things in connection with the insured's business or occupation;
or
- (g) a vehicle that weighs more than 4,500 kilograms.

84. Clause 1 (1) (t) of the *Credit Unions and Caisses Populaires Act*, being chapter 102 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (t) "Superintendent" means the Superintendent of Deposit Institutions.

85. Section 36 of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

(4) Despite subsection (1), the Plan is not subrogated to the rights of an insured person in respect of personal injuries arising directly or indirectly from the use or operation of an automobile after this section comes into force in Canada, the United States of America or any other jurisdiction designated in the *No-Fault Benefits Schedule* under the *Insurance Act*.

Exception

R.S.O. 1980,
c. 218

86.—(1) Section 1 of the *Motor Vehicle Accident Claims Act*, being chapter 298 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1983, chapter 12, section 1, is further amended by adding thereto the following subsection:

(1a) Notwithstanding that a motor vehicle is insured under a motor vehicle liability policy, it shall be deemed to be an uninsured motor vehicle for the purposes of this Act while it is being operated by an excluded driver as defined in the *Insurance Act* with respect to that policy unless the excluded driver is a named insured under another motor vehicle liability policy.

Exception re:
excluded
driver

R.S.O. 1980,
c. 218

(2) The said Act is amended by adding thereto the following section:

4b.—(1) Any person who has recourse against the Fund for no-fault benefits under section 232 of the *Insurance Act* may make application, in a form prescribed by the Minister, for payment out of the Fund of the benefits.

No-fault
benefits

(2) If a person has recourse against the Fund under section 232 of the *Insurance Act*,

Idem
R.S.O. 1980,
c. 218

- (a) a reference to an insurer in the *No-Fault Benefits Schedule* shall be deemed to be a reference to the Fund and a reference to an insured person shall be deemed to be a reference to the person who has recourse against the Fund; and
- (b) sections 238, 239a and 242a to 242i of the *Insurance Act* apply with necessary modifications.

(3) The Minister shall make payment out of the Fund of the amounts owing to a person described in subsection (2).

Idem

Idem

(4) Subsection 21 (9) does not apply to payments under this section.

87. Section 10 of the *Motorized Snow Vehicles Act*, being chapter 301 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Application
of
R.S.O. 1980,
c. 198, 298

10. The *Highway Traffic Act*, except Part XI, and the *Motor Vehicle Accident Claims Act*, except section 4b, do not apply to a motorized snow vehicle or to the driving thereof.

88. The *Ontario Automobile Insurance Board Act, 1988*, being chapter 18, is repealed.

89.—(1) Section 1 of the *Prepaid Hospital and Medical Services Act*, being chapter 388 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

R.S.O. 1980,
c. 218

(aa) “Commissioner” means the commissioner of insurance under the *Insurance Act*.

(2) Section 12 of the said Act is repealed and the following substituted therefor:

Appeal

12. An association that considers itself aggrieved by a decision of the Superintendent may appeal the decision to the Commissioner in accordance with the procedures set out in the *Insurance Act*.

R.S.O. 1980,
c. 218

90.—(1) Section 1 of the *Registered Insurance Brokers Act*, being chapter 444 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

R.S.O. 1980,
c. 218

(ca) “Commissioner” means the commissioner of insurance under the *Insurance Act*.

(2) Section 9 of the said Act is repealed, and the following substituted therefor:

Ontario
Insurance
Commission
R.S.O. 1980,
c. 218

9.—(1) The Ontario Insurance Commission established under the *Insurance Act* shall be deemed to have an interest in the Corporation, as the representative of all persons who may be served by registered insurance brokers.

Information

(2) The Corporation shall, within a reasonable time, furnish the Commissioner or the Superintendent, as the case may be, with such information and financial statements with respect to the Corporation as he or she may require.

(3) Subsection 10 (1) of the said Act is amended,

- (a) by striking out “the Minister and the Superintendent” in the second and third lines and inserting in lieu thereof “and the Minister”; and
- (b) by striking out “or Superintendent” in the last line.

91.—(1) The filings made by an insurer with the Ontario Automobile Insurance Board under Ontario Regulations 697/89, 110/90 and 111/90 shall together be deemed to constitute the insurer’s first application under section 369 of the *Insurance Act*, as re-enacted by this Act.

Transitional

R.S.O. 1980,
c. 218

(2) An application referred to in subsection (1) shall be deemed to have been made on the date that section 74 comes into force.

Idem

92. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-
ment

93. The short title of this Act is the *Insurance Statute Law Amendment Act, 1990*.

Short title

Bill 69

An Act to amend the Courts of Justice Act, 1984

The Hon. I. Scott

Attorney General



1st Reading October 23rd, 1989

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

SECTION 1.—Subsection 1. Section 90 of the Act authorizes the Rules Committee of the Supreme and District Courts to make practice and procedural rules. The new clauses set out other areas in respect of which rules can be made.

Subsection 2. Self-explanatory.

SECTION 2. The new section 128a of the Act is a codification of the current practice.

SECTION 3. Section 129 of the Act provides for periodic (structured) payments if all parties consent and for a review and revision of an order for such payments. The section is rewritten retaining the current concepts while providing structured payments to be imposed where the plaintiff requests a gross up to compensate for income tax payable.

SECTION 4. The new section 130a of the Act allows trial judges in jury cases to express an opinion to the jury as to the range of compensation. The new section 130b allows an appeal court to substitute its assessment of damages for that of a jury. The new section 130c permits payments to a plaintiff without prejudice to the defendant either as an admission of liability or otherwise.

SECTION 5. Clause 137 (1) (d) is amended so that the prejudgment interest rate is the bank rate rounded up or down to the nearest tenth of a percentage point.

SECTION 6. Subsections 138 (1) and (1a) of the Act provide for the payment of prejudgment interest. This subsection is amended to remove the distinction as to whether the claim is for a liquidated or an unliquidated amount. Subsection 138 (2) has been reworded to clarify the meaning. Subsection 138 (3) sets out when prejudgment interest is not to be paid. The new clause is self-explanatory.

SECTION 7. Section 140 of the Act gives the court a discretion in allowing interest. The revised section sets out matters for the court to consider when considering interest payments.

Bill 69

1989

**An Act to amend the
Courts of Justice Act, 1984**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 90 (1) of the *Courts of Justice Act, 1984*, being chapter 11, as amended by the Statutes of Ontario, 1984, chapter 64, section 7, is further amended by adding thereto the following clauses:

- (va) the method of calculating the amount to be included in an award of damages for future care to offset liability for income tax;
- (vb) the discount rate with respect to the rate of interest on damages for non-pecuniary loss.

(2) Section 90 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 64, section 7, is further amended by adding thereto the following subsection:

(3) Rules made under clauses (1) (q), (va) and (vb) shall be reviewed at least once in every four-year period. Idem

2. The said Act is amended by adding thereto the following section:

128a. A court, when making an award for damages for future care, shall include an amount to offset liability for income tax on income from investment of the award. Future care

3. Section 129 of the said Act is repealed and the following substituted therefor:

129.—(1) In a proceeding where damages are claimed for personal injuries or under Part V of the *Family Law Act, 1986* for loss resulting from the injury to or death of a person, the court, Periodic payment and review of damages
1986, c. 4

- (a) if all affected parties consent, may order the defendant to pay all or part of the award for damages periodically on such terms as the court considers just; and
- (b) if the plaintiff requests an increase in the award to compensate for income tax payable on the award, shall order the defendant to pay all or part of the award periodically on such terms as the court considers just.

No order

(2) An order under clause (1) (b) shall not be made if the parties otherwise consent or if the court is of the opinion that the order would not be in the best interest of the plaintiff, having regard to all the circumstances of the case.

Future review

(3) In an order made under this section, the court may, with the consent of all the affected parties, order that the award be subject to future review and revision in such circumstances and on such terms as the court considers just.

4. The said Act is further amended by adding thereto the following sections:

Guidance and submissions

130a. In an action for damages for personal injury, the court may give guidance to the jury on the amount of damages and the parties may make submissions to the jury on the amount of damages.

Power of court on appeal

130b. On an appeal from an award for damages for personal injury, the court may, if it considers it just, substitute its own assessment of the damages.

Advance payments

130c.—(1) If a defendant makes a payment to a plaintiff who is or alleges to be entitled to recover from the defendant, the payment constitutes, to the extent of the payment, a release by the plaintiff or the plaintiff's personal representative of any claim that the plaintiff or the plaintiff's personal representative or any person claiming through or under the plaintiff or by virtue of Part V of the *Family Law Act, 1986* may have against the defendant.

1986, c. 4

Idem

(2) Nothing in this section precludes the defendant making the payment from demanding, as a condition precedent to such payment, a release from the plaintiff or the plaintiff's personal representative or any other person to the extent of such payment.

Payment to be taken into account

(3) The court shall adjudicate upon the matter first without reference to the payment but, in giving judgment, the pay-

ment shall be taken into account and the plaintiff shall only be entitled to judgment for the net amount, if any.

(4) The fact of any payment shall not be disclosed to the judge or jury until after judgment but before formal entry thereof. Disclosure

5. Clause 137 (1) (d) of the said Act is repealed and the following substituted therefor:

- (d) “prejudgment interest rate” means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the proceeding was commenced, rounded to the nearest tenth of a percentage point.

6.—(1) Subsections 138 (1) and (2) of the said Act are repealed and the following substituted therefor:

(1) A person who is entitled to an order for the payment of money is entitled to claim and have included in the order an award of interest thereon at the prejudgment interest rate, calculated from the date the cause of action arose to the date of the order. Prejudgment interest

(1a) Despite subsection (1), the rate of interest on damages for non-pecuniary loss in an action for personal injury shall be the discount rate determined by the Rules of Civil Procedure. Exception for non-pecuniary loss on personal injury

(2) If the order includes an amount for past pecuniary loss, the interest calculated under subsection (1) shall be calculated on the total past pecuniary loss at the end of each six-month period and at the date of the order. Special damages

(2) Subsection 138 (3) of the said Act is amended by adding thereto the following clause:

- (da) with respect to the amount of any advance payment that has been made towards settlement of the claim, for the period after the advance payment has been made.

7. Section 140 of the said Act is repealed and the following substituted therefor:

140.—(1) The court may, where it considers it just to do so, in respect of the whole or any part of the amount on which interest is payable under section 138 or 139, Discretion of court

- (a) disallow interest under either section;

- (b) allow interest at a rate higher or lower than that provided in either section;
- (c) allow interest for a period other than that provided in either section.

Idem

(2) For the purpose of subsection (1), the court shall take into account,

- (a) changes in market interest rates;
- (b) the circumstances of the case;
- (c) the fact that an advance payment was made;
- (d) the circumstances of medical disclosure by the plaintiff;
- (e) the amount claimed and the amount recovered in the proceeding;
- (f) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- (g) the fact that a step in the proceeding was improper, vexatious or unnecessary;
- (h) the fact that a step in the proceedings was taken through negligence, mistake or excessive caution;
- (i) the fact that a party denied or refused to admit anything that should have been admitted; and
- (j) any other relevant consideration.

Transition

8. The amendments to the *Courts of Justice Act, 1984*, enacted by this Act, apply to causes arising after the 23rd day of October, 1989.

Commence-
ment

9. This Act comes into force on the day it receives Royal Assent.

Short title

10. The short title of this Act is the *Courts of Justice Amendment Act, 1989*.

Bill 69

An Act to amend the Courts of Justice Act, 1984

The Hon. I. Scott
Attorney General



<i>1st Reading</i>	October 23rd, 1989
<i>2nd Reading</i>	December 11th, 1989
<i>3rd Reading</i>	
<i>Royal Assent</i>	

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

SECTION 1. Continues the amendments made to section 90 after the coming into force of the Statutes of Ontario, 1989, chapter 55.

SECTION 2.—Subsection 1. Section 90 of the Act authorizes the Rules Committee of the Supreme and District Courts to make practice and procedural rules. The new clauses set out other areas in respect of which rules can be made.

Subsection 2. Self-explanatory.

SECTION 3. Section 129 of the Act provides for periodic (structured) payments if all parties consent and for a review and revision of an order for such payments. The section is rewritten retaining the current concepts while providing structured payments to be imposed where the plaintiff requests a gross up to compensate for income tax payable.

SECTION 4. The new section 130a of the Act allows trial judges in jury cases to express an opinion to the jury as to the range of compensation. The new section 130b allows an appeal court to substitute its assessment of damages for that of a jury. The new section 130c permits payments to a plaintiff without prejudice to the defendant either as an admission of liability or otherwise.

SECTION 5. Clause 137 (1) (d) is amended so that the prejudgment interest rate is the bank rate rounded up or down to the nearest tenth of a percentage point.

SECTION 6. Subsections 138 (1) and (1a) of the Act provide for the payment of prejudgment interest. This subsection is amended to remove the distinction as to whether the claim is for a liquidated or an unliquidated amount. Subsection 138 (2) has been reworded to clarify the meaning. Subsection 138 (3) sets out when prejudgment interest is not to be paid. The new clause is self-explanatory.

SECTION 7. Section 140 of the Act gives the court a discretion in allowing interest. The revised section sets out matters for the court to consider when considering interest payments.

Bill 69

1989

**An Act to amend the
Courts of Justice Act, 1984**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 65 (2) of the *Courts of Justice Act, 1984*, being chapter 11, as enacted by the *Statutes of Ontario, 1989*, chapter 55, section 2, is amended by adding thereto the following clauses:

- (ua) the method of calculating the amount to be included in an award of damages to offset any liability for income tax on income from investment of the award;
- (ub) the discount rate with respect to the rate of interest on damages for non-pecuniary loss.

(2) Section 65 of the said Act, as re-enacted by the *Statutes of Ontario, 1989*, chapter 55, section 2, is amended by adding thereto the following subsection:

- (4) Rules made under clauses (1) (p), (ua) and (ub) shall be reviewed at least once in every four-year period. Idem

2.—(1) Subsection 90 (1) of the said Act, as amended by the *Statutes of Ontario, 1984*, chapter 64, section 7, is further amended by adding thereto the following clauses:

- (va) the method of calculating the amount to be included in an award of damages to offset any liability for income tax on income from investment of the award;
- (vb) the discount rate with respect to the rate of interest on damages for non-pecuniary loss.

(2) Section 90 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 64, section 7, is further amended by adding thereto the following subsection:

Idem

(3) Rules made under clauses (1) (q), (va) and (vb) shall be reviewed at least once in every four-year period.

3. Section 129 of the said Act is repealed and the following substituted therefor:

Periodic
payment and
review of
damages
1986, c. 4

129.—(1) In a proceeding where damages are claimed for personal injuries or under Part V of the *Family Law Act, 1986* for loss resulting from the injury to or death of a person, the court,

- (a) if all affected parties consent, may order the defendant to pay all or part of the award for damages periodically on such terms as the court considers just; and
- (b) if the plaintiff requests that an amount be included in the award to compensate for income tax payable on the award, shall order the defendant to pay all or part of the award periodically on such terms as the court considers just.

No order

(2) An order under clause (1) (b) shall not be made if the parties otherwise consent or if the court is of the opinion that the order would not be in the best interest of the plaintiff, having regard to all the circumstances of the case.



Best interest

(3) In considering the best interest of the plaintiff, the court shall take into account,

- (a) whether the defendant has sufficient means to fund an adequate scheme of periodic payments;
- (b) whether the plaintiff has a plan or a method of payment that is better able to meet the interests of the plaintiff than periodic payments by the defendant; and
- (c) whether a scheme of periodic payments is practicable having regard to all the circumstances of the case.



Future
review

(4) In an order made under this section, the court may, with the consent of all the affected parties, order that the award be subject to future review and revision in such circumstances and on such terms as the court considers just.



(5) If the court does not make an order for periodic payment under subsection (1), it shall make an award for damages that shall include an amount to offset liability for income tax on income from investment of the award.

Amount to offset liability for income tax

4. The said Act is amended by adding thereto the following sections:

130a. In an action for damages for personal injury, the court may give guidance to the jury on the amount of damages and the parties may make submissions to the jury on the amount of damages.

Guidance and submissions

130b. On an appeal from an award for damages for personal injury, the court may, if it considers it just, substitute its own assessment of the damages.

Power of court on appeal

130c.—(1) If a defendant makes a payment to a plaintiff who is or alleges to be entitled to recover from the defendant, the payment constitutes, to the extent of the payment, a release by the plaintiff or the plaintiff's personal representative of any claim that the plaintiff or the plaintiff's personal representative or any person claiming through or under the plaintiff or by virtue of Part V of the *Family Law Act, 1986* may have against the defendant.

Advance payments

1986, c. 4

(2) Nothing in this section precludes the defendant making the payment from demanding, as a condition precedent to such payment, a release from the plaintiff or the plaintiff's personal representative or any other person to the extent of such payment.

Idem

(3) The court shall adjudicate upon the matter first without reference to the payment but, in giving judgment, the payment shall be taken into account and the plaintiff shall only be entitled to judgment for the net amount, if any.

Payment to be taken into account

(4) The fact of any payment shall not be disclosed to the judge or jury until after judgment but shall be disclosed before formal entry thereof.

Disclosure

5. Clause 137 (1) (d) of the said Act is repealed and the following substituted therefor:

- (d) "prejudgment interest rate" means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the proceeding was commenced, rounded to the nearest tenth of a percentage point.

6.—(1) Subsections 138 (1) and (2) of the said Act are repealed and the following substituted therefor:

Prejudgment
interest

(1) A person who is entitled to an order for the payment of money is entitled to claim and have included in the order an award of interest thereon at the prejudgment interest rate, calculated from the date the cause of action arose to the date of the order.

Exception for
non-pe-
cuniary loss
on personal
injury

(1a) Despite subsection (1), the rate of interest on damages for non-pecuniary loss in an action for personal injury shall be the discount rate determined by the Rules of Civil Procedure.

Special
damages

(2) If the order includes an amount for past pecuniary loss, the interest calculated under subsection (1) shall be calculated on the total past pecuniary loss at the end of each six-month period and at the date of the order.

(2) Subsection 138 (3) of the said Act is amended by adding thereto the following clause:

(da) with respect to the amount of any advance payment that has been made towards settlement of the claim, for the period after the advance payment has been made.

7. Section 140 of the said Act is repealed and the following substituted therefor:

Discretion of
court

140.—(1) The court may, where it considers it just to do so, in respect of the whole or any part of the amount on which interest is payable under section 138 or 139,

- (a) disallow interest under either section;
- (b) allow interest at a rate higher or lower than that provided in either section;
- (c) allow interest for a period other than that provided in either section.

Idem

(2) For the purpose of subsection (1), the court shall take into account,

- (a) changes in market interest rates;
- (b) the circumstances of the case;
- (c) the fact that an advance payment was made;

- (d) the circumstances of medical disclosure by the plaintiff;
- (e) the amount claimed and the amount recovered in the proceeding;
- (f) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding; and
- (g) any other relevant consideration.

8.—(1) The amendments to the *Courts of Justice Act, 1984*, as enacted by this Act, except for the amendments enacted by section 1, section 4 and subsection 6 (2), apply to causes of action arising after the 23rd day of October, 1989. Transition

(2) The amendments to the *Courts of Justice Act, 1984*, as enacted by section 4 and subsection 6 (2) of this Act, apply to, Idem

- (a) actions commenced but not settled or adjudicated upon before this Act comes into force; and
- (b) causes of action arising after this Act comes into force.

(3) Section 1 comes into force on the day that section 2 of the *Courts of Justice Amendment Act, 1989*, being chapter 55, is proclaimed in force. Commence-
ment,
section 1

9. Subject to subsection 8 (3), this Act comes into force on the day it receives Royal Assent. Commence-
ment,
general

10. The short title of this Act is the *Courts of Justice Amendment Act, 1989*. Short title

Bill 69

2ND SESSION, 34TH LEGISLATURE, ONTARIO

38 ELIZABETH II, 1989

Bill 69

*(Chapter 67
Statutes of Ontario, 1989)*

An Act to amend the Courts of Justice Act, 1984

The Hon. I. Scott
Attorney General



<i>1st Reading</i>	October 23rd, 1989
<i>2nd Reading</i>	December 11th, 1989
<i>3rd Reading</i>	December 14th, 1989
<i>Royal Assent</i>	December 14th, 1989

Bill 69

1989

**An Act to amend the
Courts of Justice Act, 1984**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 65 (2) of the *Courts of Justice Act, 1984*, being chapter 11, as enacted by the Statutes of Ontario, 1989, chapter 55, section 2, is amended by adding thereto the following clauses:

- (ua) the method of calculating the amount to be included in an award of damages to offset any liability for income tax on income from investment of the award;
- (ub) the discount rate with respect to the rate of interest on damages for non-pecuniary loss.

(2) Section 65 of the said Act, as re-enacted by the Statutes of Ontario, 1989, chapter 55, section 2, is amended by adding thereto the following subsection:

(4) Rules made under clauses (1) (p), (ua) and (ub) shall ^{Idem} be reviewed at least once in every four-year period.

2.—(1) Subsection 90 (1) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 64, section 7, is further amended by adding thereto the following clauses:

- (va) the method of calculating the amount to be included in an award of damages to offset any liability for income tax on income from investment of the award;
- (vb) the discount rate with respect to the rate of interest on damages for non-pecuniary loss.

(2) Section 90 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 64, section 7, is further amended by adding thereto the following subsection:

Idem

(3) Rules made under clauses (1) (q), (va) and (vb) shall be reviewed at least once in every four-year period.

3. Section 129 of the said Act is repealed and the following substituted therefor:

Periodic
payment and
review of
damages
1986, c. 4

129.—(1) In a proceeding where damages are claimed for personal injuries or under Part V of the *Family Law Act, 1986* for loss resulting from the injury to or death of a person, the court,

- (a) if all affected parties consent, may order the defendant to pay all or part of the award for damages periodically on such terms as the court considers just; and
- (b) if the plaintiff requests that an amount be included in the award to compensate for income tax payable on the award, shall order the defendant to pay all or part of the award periodically on such terms as the court considers just.

No order

(2) An order under clause (1) (b) shall not be made if the parties otherwise consent or if the court is of the opinion that the order would not be in the best interest of the plaintiff, having regard to all the circumstances of the case.

Best interest

(3) In considering the best interest of the plaintiff, the court shall take into account,

- (a) whether the defendant has sufficient means to fund an adequate scheme of periodic payments;
- (b) whether the plaintiff has a plan or a method of payment that is better able to meet the interests of the plaintiff than periodic payments by the defendant; and
- (c) whether a scheme of periodic payments is practicable having regard to all the circumstances of the case.

Future
review

(4) In an order made under this section, the court may, with the consent of all the affected parties, order that the award be subject to future review and revision in such circumstances and on such terms as the court considers just.

(5) If the court does not make an order for periodic payment under subsection (1), it shall make an award for damages that shall include an amount to offset liability for income tax on income from investment of the award.

Amount to offset liability for income tax

4. The said Act is amended by adding thereto the following sections:

130a. In an action for damages for personal injury, the court may give guidance to the jury on the amount of damages and the parties may make submissions to the jury on the amount of damages.

Guidance and submissions

130b. On an appeal from an award for damages for personal injury, the court may, if it considers it just, substitute its own assessment of the damages.

Power of court on appeal

130c.—(1) If a defendant makes a payment to a plaintiff who is or alleges to be entitled to recover from the defendant, the payment constitutes, to the extent of the payment, a release by the plaintiff or the plaintiff’s personal representative of any claim that the plaintiff or the plaintiff’s personal representative or any person claiming through or under the plaintiff or by virtue of Part V of the *Family Law Act, 1986* may have against the defendant.

Advance payments

1986, c. 4

(2) Nothing in this section precludes the defendant making the payment from demanding, as a condition precedent to such payment, a release from the plaintiff or the plaintiff’s personal representative or any other person to the extent of such payment.

Idem

(3) The court shall adjudicate upon the matter first without reference to the payment but, in giving judgment, the payment shall be taken into account and the plaintiff shall only be entitled to judgment for the net amount, if any.

Payment to be taken into account

(4) The fact of any payment shall not be disclosed to the judge or jury until after judgment but shall be disclosed before formal entry thereof.

Disclosure

5. Clause 137 (1) (d) of the said Act is repealed and the following substituted therefor:

(d) “prejudgment interest rate” means the bank rate at the end of the first day of the last month of the quarter preceding the quarter in which the proceeding was commenced, rounded to the nearest tenth of a percentage point.

6.—(1) Subsections 138 (1) and (2) of the said Act are repealed and the following substituted therefor:

Prejudgment
interest

(1) A person who is entitled to an order for the payment of money is entitled to claim and have included in the order an award of interest thereon at the prejudgment interest rate, calculated from the date the cause of action arose to the date of the order.

Exception for
non-pe-
cuniary loss
on personal
injury

(1a) Despite subsection (1), the rate of interest on damages for non-pecuniary loss in an action for personal injury shall be the discount rate determined by the Rules of Civil Procedure.

Special
damages

(2) If the order includes an amount for past pecuniary loss, the interest calculated under subsection (1) shall be calculated on the total past pecuniary loss at the end of each six-month period and at the date of the order.

(2) Subsection 138 (3) of the said Act is amended by adding thereto the following clause:

(da) with respect to the amount of any advance payment that has been made towards settlement of the claim, for the period after the advance payment has been made.

7. Section 140 of the said Act is repealed and the following substituted therefor:

Discretion of
court

140.—(1) The court may, where it considers it just to do so, in respect of the whole or any part of the amount on which interest is payable under section 138 or 139,

- (a) disallow interest under either section;
- (b) allow interest at a rate higher or lower than that provided in either section;
- (c) allow interest for a period other than that provided in either section.

Idem

(2) For the purpose of subsection (1), the court shall take into account,

- (a) changes in market interest rates;
- (b) the circumstances of the case;
- (c) the fact that an advance payment was made;

- (d) the circumstances of medical disclosure by the plaintiff;
- (e) the amount claimed and the amount recovered in the proceeding;
- (f) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding; and
- (g) any other relevant consideration.

8.—(1) The amendments to the *Courts of Justice Act, 1984*, as enacted by this Act, except for the amendments enacted by section 1, section 4 and subsection 6 (2), apply to causes of action arising after the 23rd day of October, 1989. Transition

(2) The amendments to the *Courts of Justice Act, 1984*, as enacted by section 4 and subsection 6 (2) of this Act, apply to, Idem

- (a) actions commenced but not settled or adjudicated upon before this Act comes into force; and
- (b) causes of action arising after this Act comes into force.

(3) Section 1 comes into force on the day that section 2 of the *Courts of Justice Amendment Act, 1989*, being chapter 55, is proclaimed in force. Commence-
ment,
section 1

9. Subject to subsection 8 (3), this Act comes into force on the day it receives Royal Assent. Commence-
ment,
general

10. The short title of this Act is the *Courts of Justice Amendment Act, 1989*. Short title

Bill 70

An Act to amend the Evidence Act

The Hon. I. Scott
Attorney General

1st Reading October 23rd, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

Section 52 of the *Evidence Act* is re-enacted so that it applies to a wide range of health practitioners.

A report of a practitioner that is intended to be put in evidence will now be automatically given to all parties to the action together with all other reports of the practitioner that relate to the action. These additional reports will also be admissible in evidence in the action.

The section also provides that all practitioners who give evidence in court are subject to the same rules.

Bill 70

1989

An Act to amend the Evidence Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 52 of the *Evidence Act*, being chapter 145 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

52.—(1) In this section,

Definition

“practitioner” means,

- (a) a person licensed to practise under the *Health Disciplines Act*, R.S.O. 1980,
c. 196
- (b) a drugless practitioner registered under the *Drugless Practitioners Act*, R.S.O. 1980,
c. 127
- (c) a denture therapist under the *Denture Therapists Act*, R.S.O. 1980,
c. 115
- (d) a chiropodist registered under the *Chiropody Act*, R.S.O. 1980,
c. 72
- (e) a registered psychologist under the *Psychologists Registration Act*, or R.S.O. 1980,
c. 404
- (f) a person licensed or registered to practise in another part of Canada under an Act that is similar to an Act referred to in clause (a), (b), (c), (d) or (e).

(2) A report obtained by or prepared for a party to an action and signed by a practitioner is, with leave of the court and after at least seven days notice has been given to all other parties, admissible in evidence in the action.

Medical
reports

(3) Unless otherwise ordered by the court, a party to an action is entitled, upon notice being given under subsection

Entitlement

(2), to a copy of the report together with any other report of the practitioner that relates to the action.

Other reports (4) A report that is produced under subsection (3) is, with leave of the court, admissible in evidence in the action.

Report required (5) Except by leave of the judge presiding at the trial, a practitioner who signs a report with respect to a party shall not give evidence at the trial unless the report is given to all other parties in accordance with subsection (2).

If practitioner called unnecessarily (6) If a practitioner is required to give evidence in person in an action and the court is of the opinion that the evidence could have been produced as effectively by way of a report, the court may order the party that required the attendance of the practitioner to pay as costs therefor such sum as the court considers appropriate.

Transition **2. The amendments to the *Evidence Act*, enacted by this Act, apply to causes of action arising after the 23rd day of October, 1989.**

Commencement **3. This Act comes into force on the day it receives Royal Assent.**

Short title **4. The short title of this Act is the *Evidence Amendment Act, 1989*.**

Bill 70

An Act to amend the Evidence Act

The Hon. I. Scott
Attorney General



1st Reading October 23rd, 1989
2nd Reading December 11th, 1989
3rd Reading
Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

Section 52 of the *Evidence Act* is re-enacted so that it applies to a wide range of health practitioners.

A report of a practitioner that is intended to be put in evidence will now be automatically given to all parties to the action together with all other reports of the practitioner that relate to the action. These additional reports will also be admissible in evidence in the action.

The section also provides that all practitioners who give evidence in court are subject to the same rules.

Bill 70

1989

An Act to amend the Evidence Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 52 of the *Evidence Act*, being chapter 145 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

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Definition

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- (a) a person licensed to practise under the *Health Disciplines Act*, R.S.O. 1980,
c. 196
- (b) a drugless practitioner registered under the *Drugless Practitioners Act*, R.S.O. 1980,
c. 127
- (c) a denture therapist under the *Denture Therapists Act*, R.S.O. 1980,
c. 115
- (d) a chiropodist registered under the *Chiropody Act*, R.S.O. 1980,
c. 72
- (e) a registered psychologist under the *Psychologists Registration Act*, or R.S.O. 1980,
c. 404
- (f) a person licensed or registered to practise in another part of Canada under an Act that is similar to an Act referred to in clause (a), (b), (c), (d) or (e).




(2) A report obtained by or prepared for a party to an action and signed by a practitioner and any other report of the practitioner that relates to the action are, with leave of the court and after at least ten days notice has been given to all other parties, admissible in evidence in the action.


Medical
reports

(3) Unless otherwise ordered by the court, a party to an action is entitled, at the time that notice is given under sub-

Entitlement

section (2), to a copy of the report together with any other report of the practitioner that relates to the action. 

Report
required


 (4) Except by leave of the judge presiding at the trial, a practitioner who signs a report with respect to a party shall not give evidence at the trial unless the report is given to all other parties in accordance with subsection (2).

If practi-
tioner called
unnecessarily

(5) If a practitioner is required to give evidence in person in an action and the court is of the opinion that the evidence could have been produced as effectively by way of a report, the court may order the party that required the attendance of the practitioner to pay as costs therefor such sum as the court considers appropriate.

Transition

 **2. The amendments to the *Evidence Act*, as enacted by this Act, apply to,**

- (a) actions commenced but not settled or adjudicated upon before this Act comes into force; and
- (b) causes of action arising after this Act comes into force. 

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Evidence Amendment Act, 1989*.

2ND SESSION, 34TH LEGISLATURE, ONTARIO

38 ELIZABETH II, 1989

Bill 70

(Chapter 68
Statutes of Ontario, 1989)

An Act to amend the Evidence Act

The Hon. I. Scott
Attorney General



<i>1st Reading</i>	October 23rd, 1989
<i>2nd Reading</i>	December 11th, 1989
<i>3rd Reading</i>	December 14th, 1989
<i>Royal Assent</i>	December 14th, 1989

Bill 70

1989

An Act to amend the Evidence Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 52 of the *Evidence Act*, being chapter 145 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

52.—(1) In this section,

Definition

“practitioner” means,

- (a) a person licensed to practise under the *Health Disciplines Act*, R.S.O. 1980,
c. 196
- (b) a drugless practitioner registered under the *Drugless Practitioners Act*, R.S.O. 1980,
c. 127
- (c) a denture therapist under the *Denture Therapists Act*, R.S.O. 1980,
c. 115
- (d) a chiropodist registered under the *Chiropody Act*, R.S.O. 1980,
c. 72
- (e) a registered psychologist under the *Psychologists Registration Act*, or R.S.O. 1980,
c. 404
- (f) a person licensed or registered to practise in another part of Canada under an Act that is similar to an Act referred to in clause (a), (b), (c), (d) or (e).

(2) A report obtained by or prepared for a party to an action and signed by a practitioner and any other report of the practitioner that relates to the action are, with leave of the court and after at least ten days notice has been given to all other parties, admissible in evidence in the action.

Medical
reports

(3) Unless otherwise ordered by the court, a party to an action is entitled, at the time that notice is given under sub-

Entitlement

section (2), to a copy of the report together with any other report of the practitioner that relates to the action.

Report
required

(4) Except by leave of the judge presiding at the trial, a practitioner who signs a report with respect to a party shall not give evidence at the trial unless the report is given to all other parties in accordance with subsection (2).

If practi-
tioner called
unnecessarily

(5) If a practitioner is required to give evidence in person in an action and the court is of the opinion that the evidence could have been produced as effectively by way of a report, the court may order the party that required the attendance of the practitioner to pay as costs therefor such sum as the court considers appropriate.

Transition

2. The amendments to the *Evidence Act*, as enacted by this Act, apply to,

- (a) actions commenced but not settled or adjudicated upon before this Act comes into force; and
- (b) causes of action arising after this Act comes into force.

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

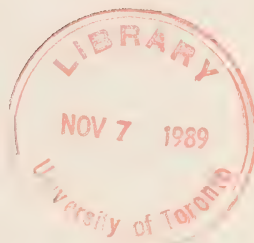
Short title

4. The short title of this Act is the *Evidence Amendment Act, 1989*.

Bill 71

An Act to amend the Mining Act

The Hon. H. O'Neil
Minister of Mines



1st Reading October 24th, 1989
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The following is a summary of the proposed changes to the Act:

1. Prospector's Licences

It will no longer be necessary to hold a prospector's licence to hold or acquire an interest in a mining claim. Licences will be valid for a five-year period, renewable on the prospector's birth date. At present, licences are valid for one year and expire on the 31st day of March. In future only individuals will be eligible for a licence. Claim tags will no longer expire with the prospector's licence and may be used by any licensee. The provision allowing for free assay coupons will be repealed. [Sections 1 (6), 9 to 15, 18, 19, 32 (2), 33, 34 (1), 37, 39, 41, 44 (2), 50, 51, 52 (2), 52 (5), 56 (1), 70 (1) and 108 (1)].

2. Staking Practices

Provisions setting out the size, form and manner that a mining claim shall be staked will be put in regulations. The priority of staking will be based on the completion time and will determine priority of recording where two or more licensees make application to record the staking of all or part of the same lands. [Sections 24, 25, 26 (1), 28 and 30 to 33].

3. Security of Tenure

Disputes challenging the validity of a mining claim will not be allowed after one year of the recording of the mining claim or after the first prescribed unit of assessment work has been performed and filed, and, where necessary, approved. A transferee who has acquired a mining claim in good faith will be allowed to re-stake the claim at any time without any loss of assessment work. All provisions in the *Mining Act* dealing with Certificates of Record will be repealed. The definition of "substantial compliance" will be broadened. [Sections 29, 34, 35, 37, 51, 55, 56 (2), 59 (1), 70 (2), 70 (3), 70 (4), 72 (2), 108 (3) and 108 (4)].

4. Assessment Work

The holder of a mining claim will be required to perform annual units of assessment work, measured in terms of dollars spent, subject to details defined in regulations. Certain types of assessment work (prospecting and regional surveys) performed prior to the staking of a mining claim, and assessment work performed on contiguous leased or patented lands will be eligible for credit. Authority to grant extensions of time to perform assessment work will be moved from the Mining and Lands Commissioner to the mining recorders. The Bill repeals all provisions dealing with the power to grant relief from forfeiture, except in the circumstances of administrative error on the part of the Crown. [Sections 1 (1), 36, 46, 47, 52 (3), 53 and 54].

5. Surface Rights Compensation

A claim holder will be required to give notice to a surface rights holder prior to first performing ground assessment work. A claim holder, lessee, or owner of mining rights will be required to compensate the surface rights holder for damages sustained to the surface rights. Any person who damages mineral exploration workings will also have an obligation to compensate the claim holder. [Sections 57 and 58].

6. Mining Leases and Patents

Mining leases will be issued at the claim holder's option at any time after the first prescribed unit of assessment work has been performed and filed (and where necessary, approved). Leases will only be renewed where the production of minerals has occurred continuously for more than one year in the previous term of the lease or where the lessee has demonstrated a reasonable effort to bring the property into production. The provision allowing for the issuance of freehold patents will be repealed. All references to

“Acreage Tax” in Part XIV of the Act will be changed to “Mining Land Tax” and the rates will be prescribed in regulations. [Sections 52 (4), 59 to 62, 92, 93 and 108 (5)].

7. Discretionary Grants of Mineral Tenure

The various provisions in the *Mining Act* respecting discretionary grants of mineral tenure will be consolidated into subsection 190 (3) of the Act. [Sections 22, 68, 82 and 91].

8. Operation of Mines

Part IX of the Act is re-enacted. These provisions will expand the legislative framework to cover all stages of mining activity including advanced exploration, development and closure. Complementary amendments will be made to other parts of the Act. [Sections 1 (7), 1 (8), 77 and 79].

The following is a summary of the more significant features of the new Part IX as set out in section 77 of the Bill:

- (a) There will be new requirements for notice to the public and government of advanced exploration and mine development activity. (Proposed sections 161a and 161b of the Act).
- (b) Closure plans with related financial assurances will be required before development or production commences to ensure that adequate mine rehabilitation is completed. (Proposed sections 161d and 161e of the Act).
- (c) Directors of Mine Rehabilitation and Rehabilitation Inspectors will be appointed to regulate mine rehabilitation. Decisions of the Director will be appealable to the Mining and Lands Commissioner. (Proposed sections 161 (2), 161f and 161-l of the Act).
- (d) Mineral Development Officers will be appointed to co-ordinate and expedite communication between the mining industry, the public and affected ministries and agencies of the Government of Ontario. (Proposed section 161 (1) of the Act).
- (e) Owners of existing mines will be required to give notice to the government and the Minister will determine the period of time within which a closure plan (which includes a financial assurance) is to be submitted. (Proposed section 161g of the Act).
- (f) Owners who abandon a mine before or after the day Part IX comes into force will still have a duty to give notice to the government and will be required to rehabilitate the site. (Proposed sections 161h and 161i of the Act).
- (g) Owners of mining lands will be required to rehabilitate before the surrender of those lands to the Crown. (Proposed section 161j of the Act).
- (h) The cost of rehabilitation measures carried out by the Crown on behalf of a mine owner will be a debt due to the Crown. (Proposed section 161k of the Act).
- (i) The penalties for contravening the Part IX provisions will include fines and court injunctions to prevent further activity on a mining site. (Proposed section 176 of the Act as set out in section 79 of the Bill).

9. Surface Mining of Non-Metallic Minerals

All surface mining of non-metallic minerals on private land (e.g. mining leases or patents) outside of designated areas under the *Aggregate Resources Act, 1989* will be regulated under the new Part IX. [Proposed sections 1, 118 and 160 (2) (c)].

10. The Mining and Lands Commissioner

Certain procedural matters with respect to the Mining and Lands Commissioner will be amended, for example a fee will be required when applying for an appointment for hearing to cover the recording of any orders in the matter and the Commissioner may order any party to be examined before the official examiner or to file a pre-hearing statement setting out the evidence that will be relied upon. Section 161-l of the re-enacted Part IX of the Act will provide for appeals from the Director of Mine Rehabilitation to the Commissioner. [Sections 72 (1) and 73 to 77].

11. Regulations

The regulation-making powers set out in the Act will be re-enacted. There will be increased use of regulations for such matters as the structure of fees, approved staking methods, assessment work requirements, and the operation of mines. [Section 82].

12. Miscellaneous

Inconsistencies and outdated references will be corrected. [Sections 1 (2) to 1 (10), 2 to 8, 16, 17, 20, 21, 23, 27, 38, 40, 42, 43, 44 (1), 44 (3), 45, 48, 49, 59 (5), 61, 63 to 67, 71, 77 (Parts IX-A and IX-B), 78, 80, 81 and 83 to 107].

Bill 71**1989****An Act to amend the Mining Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraph 1 of section 1 of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

1. “anniversary date”, when referring to a mining claim, means the date that occurs at annual intervals after the recording of a mining claim, or such other date as results from the application of subsection 79 (2).

(2) Paragraphs 4 and 5 of the said section 1 are repealed and the following substituted therefor:

4. “Crown land” does not include,
 - i. land, the surface rights, mining rights or the mining and surface rights of which are under lease or licence of occupation from the Crown,
 - ii. land in the actual use or occupation of the Crown, the Crown in right of Canada, or of a department of the Government of Canada or a ministry of the Government of Ontario,
 - iii. land the use of which is withdrawn or set apart or appropriated for a public purpose, or
 - iv. land held by a ministry of the Government of Ontario;
5. “Deputy Minister” means the Deputy Minister of Mines.

(3) Paragraph 6 of the said section 1 is repealed.

(4) Paragraph 7 of the said section 1 is repealed and the following substituted therefor:

7. “holder”, when referring to the holder of an unpatented mining claim, a boring permit or a licence of occupation issued under this Act, means the holder of record.

(5) Paragraph 9 of the said section 1 is repealed and the following substituted therefor:

9. “inspector” includes a geologist on the staff of the Ministry and any other officer or agent designated by the Minister to carry out an inspection or investigation of the mining industry.

(6) Paragraph 11 of the said section 1 is repealed and the following substituted therefor:

11. “licensee” means a person holding a prospector’s licence issued under this Act or a renewal thereof.

(7) Paragraphs 14, 15 and 16 of the said section 1 are repealed and the following substituted therefor:

14. “mine”, when used as a noun, means any opening or excavation in, or working of the ground, for the purpose of winning any mineral or mineral bearing substance, and all ways, works, machinery, plant, buildings and premises below or above the ground belonging to or used in connection with such activity, and any roasting or smelting furnace, concentrator, mill, work or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any of such substances and includes mines that have been temporarily suspended, rendered inactive, closed out or abandoned as well as lands where tailings, or wasterock, or both, or any other prescribed substances from any opening or excavation or working of the ground have been deposited;
15. “mine”, when used as a verb, means the performance of any work in or about a mine, as defined in paragraph 14;
16. “minerals” means all naturally occurring metallic and non-metallic minerals, including natural gas, petroleum, coal, salt, quarry and pit material, gold,

silver and all rare and precious metals, but does not include sand, gravel and peat;

- 16a. "mining claim" means a parcel of land, including land under water, that has been staked and recorded in accordance with this Act and the regulations.

(8) Paragraphs 18, 19, 20, 21 and 22 of the said section 1 are repealed and the following substituted therefor:

18. "mining rights" means the right to minerals on, in or under any land;
19. "Minister" means the Minister of Mines, except that in Parts IV and IX-A "Minister" means the Minister of Natural Resources;
20. "Ministry" means the Ministry of the Minister;
21. "owner", when used in Parts IX, IX-B and XI, includes every person, being the immediate proprietor, lessee or occupier of a mine, or a part thereof, or of any land located, patented or leased as mining land, and includes an agent, or a person designated by the owner or agent as responsible for the control, management and direction of a mine, or a part thereof, but does not include a person receiving merely a royalty from a mine, or mining lands, or the owner of the surface rights only;
22. "patent" means a grant from the Crown in fee simple or for a less estate made under the Great Seal, and includes leasehold patents and freehold patents, but in sections 4, 28, 97, 100 to 108, 190, 194, 197 and 204, the meaning is limited to freehold patents.

(9) Paragraph 23 of the said section 1 is repealed and the following substituted therefor:

23. "prescribed" means prescribed by the regulations;
- 23a. "prospecting" means the investigating of, or searching for, minerals.

(10) Paragraphs 26 and 29 of the said section 1 are repealed.

2. The said Act is amended by adding thereto the following section:

Purpose of
Act

1a. The purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources and to minimize adverse effects on the environment through rehabilitation of mining lands in Ontario.

3. Section 3 of the said Act is repealed.

4. Section 4 of the said Act is amended by adding thereto the following subsections:

Immunity for
acts done in
good faith

(3) No action or other proceeding for damages shall be instituted against the Minister, the Deputy Minister or any officer or employee of the Ministry or any one acting under the authority of the Minister or Deputy Minister for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

Crown
liability
R.S.O. 1980,
c. 393

(4) Subsection (3) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (3) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (3) had not been enacted.

Delegation of
Minister's
powers, etc.

(5) Where under this Act a power or duty is granted to or vested in the Minister, the Minister may in writing delegate that power or duty to the Deputy Minister or to any officer or employee of the Ministry, subject to such limitations, conditions and requirements as the Minister sets out in the delegation.

Employees
authorized to
take
affidavits

(6) The Minister may empower such employees of the Ministry as the Minister designates to administer oaths and take and receive affidavits, declarations and affirmations authorized by law, for the purposes of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of such oath, affidavit, declaration or affidavit, all the powers of a commissioner for taking affidavits under the *Commissioners for taking Affidavits Act*.

R.S.O. 1980,
c. 75

5.—(1) Subsection 6 (1) of the said Act is repealed and the following substituted therefor:

Mining
recorder

(1) The Minister may appoint an employee of the Ministry as mining recorder for each mining division.

(2) Subsection 6 (3) of the said Act is repealed.

6. Section 7 of the said Act is amended by inserting after “such” in the first line “record”.

7.—(1) Section 9 of the said Act is amended by striking out “any of such books” in the first and second lines and inserting in lieu thereof “a record book”.

(2) The said section 9 is further amended by adding thereto the following subsections:

(2) Where a copy of or extract from an entry in a record book or any document filed in the recorder's office is recorded electronically or on a magnetic medium, any writing that,

Computer
printout,
etc.,
admissible
evidence

- (a) represents the entry in the record book or the filed document;
- (b) is generated or produced from the electronic record or magnetic medium; and
- (c) is in a readily understandable form,

is admissible in evidence to the same extent as the original book or filed document.

(3) Where a record in a recorder's office is recorded electronically or on a magnetic medium and there is no original written record that corresponds to the record, any writing that,

Idem

- (a) represents the record;
- (b) is generated by or produced from the electronic record or magnetic medium; and
- (c) is in a readily understandable form,

is admissible in evidence to the same extent as the record would be if it were an original written record.

8.—(1) Subsection 12 (1) of the said Act is amended by striking out “and any such purchase or interest is void” in the fourth and fifth lines.

(2) Subsection 12 (2) of the said Act is repealed and the following substituted therefor:

(2) Where the Deputy Minister is satisfied that an officer has in good faith acquired an interest referred to in subsection

Waiver by
Deputy
Minister

(1) for other than mining purposes, the Deputy Minister may in writing waive the application of subsection (1) to the officer.

Penalty

(3) Any officer contravening subsection (1) forfeits his or her office.

9. Subsection 18 (1) of the said Act is repealed and the following substituted therefor:

Licence
required

(1) No person shall prospect on Crown lands or stake out, record or apply to record the staking of a mining claim unless the person is the holder of a prospector's licence issued under this Act.

10. Section 19 of the said Act is repealed and the following substituted therefor:

Who may
receive
licence

19.—(1) Any natural person who is of the age of eighteen years or over is entitled to obtain a prospector's licence upon application therefor made in the prescribed form and upon payment of the prescribed fee.

Date and
term of
licence

(2) A licence shall be dated on the day of its issue and expires at midnight on the day of the fifth anniversary of the licensee's birth date that follows the issue of the licence.

Not valid
unless signed

(3) A licence is not valid unless it is signed by the holder thereof in the space provided on the licence.

Licence not
transferrable

(4) A licence is not transferrable.

Who may
issue

(5) A licence may be issued by any recorder.

Service

(6) Any notice or document relating to a licensee is sufficiently served upon the licensee if delivered or sent by prepaid first class mail to the address shown on the application for the prospector's licence or to the address given under subsection (8), if applicable.

Idem

(7) Where service is made by prepaid first class mail under subsection (6) it shall be deemed to have been made on the fifth day after the day of mailing.

Notice of
change of
address

(8) A licensee shall notify, in the prescribed form, the recorder of any change in the address of the licensee.

11. Section 21 of the said Act is repealed.

12.—(1) Subsection 22 (1) of the said Act is repealed and the following substituted therefor:

(1) A licensee is entitled to a renewal of his or her licence upon making application therefor in the prescribed form and paying the prescribed fee within sixty days of its expiration. Renewal of licence

(1a) Notice of the expiration of a licence shall be given by the recorder to the holder of the licence not later than sixty days before the expiry date. Notice of expiration of licence

(2) Subsections 22 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) A licence may be renewed by any recorder. Who may renew

(3) The renewal shall bear date on the day following the expiration of the licence or renewal of licence of which it is the renewal and shall take effect immediately upon the expiration of that licence, or renewal thereof, as the case may be. Date and term of renewal

(3) Subsection 22 (4) of the said Act is amended by adding at the end thereof “and shall expire at 12 o’clock midnight on the day that is the fifth anniversary of the licensee’s birth date following the effective date of the renewal”.

(4) Subsection 22 (5) of the said Act is repealed and the following substituted therefor:

(5) The Minister shall renew without fee the licence of a person who has held a licence continuously for twenty-five years, and the licence shall remain in good standing during the lifetime of the licensee. Lifetime renewal by Minister

(6) The Minister may, at his or her discretion, renew the licence of a person without fee and order that the licence remain in good standing during the lifetime of the licensee. Idem

13. Subsection 24 (1) of the said Act is repealed and the following substituted therefor:

(1) No person shall apply for or hold more than one prospector’s licence. Not more than one licence

14.—(1) Subsection 27 (5) of the said Act is repealed and the following substituted therefor:

(5) While a licence is suspended under subsection (3), the licensee may renew the licence but the licensee may not stake out or apply to record a mining claim. Rights of licensee under suspension

Where holder
of mining
claim
contravenes
Act

(5a) Where the recorder finds, after a hearing, that a holder of a mining claim has contravened any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the recorder, order that such holder may not acquire an unpatented mining claim or interest therein through transfer or obtain an extension of time in which to perform work or to apply for lease on any unpatented mining claim recorded in the name of the holder.

Cancellation
of mining
claims

(5b) Where the Commissioner finds, after a hearing, that a holder of a mining claim has been guilty of a wilful contravention of any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the Commissioner, declare any mining claims of the holder to be cancelled and thereupon all rights of the holder in or to mining claim lands cease.

Order
pending
hearing

(5c) Pending the holding of a hearing on any matter under this section, the Commissioner or the recorder, as the case may be, before whom the hearing will be held, may order that any mining claim of the licensee or holder whose conduct is in question shall not, before the conclusion of the hearing and final disposition of the matter, be transferred to any other person.

Prohibition
against
staking out
claims, etc.

(5d) Where mining claims are cancelled under subsection (5b), the former holder of the mining claims may not stake out or apply for a mining claim or acquire an unpatented mining claim or interest therein through transfer for such period of time as the Minister determines, and the Minister shall notify the former holder of the period of time so determined.

(2) Subsection 27 (6) of the said Act is repealed and the following substituted therefor:

Appeal

(6) A finding by the Commissioner that a licensee or holder of a mining claim has wilfully contravened this Act or the regulations or by a recorder that a licensee or holder of a mining claim has contravened this Act or the regulations, as the case may be, may be appealed in like manner as any decision of the Commissioner or recorder, respectively, and the Minister shall give effect to the decision on the appeal.

15. Section 29 of the said Act is amended by striking out "licensee" in the fourth line and inserting in lieu thereof "person".

16.—(1) Clause 30 (b) of the said Act is repealed and the following substituted therefor:

- (b) upon any land laid out on a registered plan of subdivision.

(2) Clause 30 (d) of the said Act is repealed.

17.—(1) Clause 31 (b) of the said Act is repealed and the following substituted therefor:

- (b) for which an application brought in good faith is pending in the Ministry of Natural Resources under the *Public Lands Act* or otherwise, and the applicant may acquire the minerals; or

R.S.O. 1980,
c. 413

(2) Clause 31 (c) of the said Act is amended by inserting after “Ministry” in the third line “of Natural Resources”.

(3) Clause 31 (d) of the said Act is amended by striking out “and Communications” in the second line.

18. Subsection 33 (1) of the said Act is amended by striking out “or company” in the second and third lines.

19. Section 34 of the said Act is amended by striking out “licensee” in the fifth line and inserting in lieu thereof “holder of the mining claim”.

20. Section 35 of the said Act is amended by striking out “and Communications” in the third line.

21.—(1) Subsection 36 (1) of the said Act is amended by striking out “or an officer appointed under this Act and designated by the Minister” in the first and second lines.

(2) Subsection 36 (2) of the said Act is repealed and the following substituted therefor:

- (2) Where the Minister makes an order under subsection (1), the Minister shall, within twenty-four hours of the date of the order, mail a copy of the order to the recorder.

Copy of
order sent to
recorder

(3) Subsection 36 (4) of the said Act is repealed and the following substituted therefor:

- (4) Lands, mining rights or surface rights withdrawn under this section, until re-opened by the Minister, shall remain withdrawn and shall not be prospected or staked out.

Lands
withdrawn
not to be
prospect-
ed, etc.

22. Section 38 of the said Act is repealed.

23. Section 39 of the said Act is repealed and the following substituted therefor:

Permit under
R.S.O. 1980,
cc. 173, 413

39. Before beginning or carrying on any prescribed assessment work on a mining claim, the holder thereof, in addition to any other requirement, shall obtain a written permit entitling the holder to do so as provided in the *Forest Fires Prevention Act* or the *Public Lands Act*.

24. Section 40 of the said Act is repealed and the following substituted therefor:

Manner of
staking
mining claim

40. A mining claim shall be staked in such size, form and manner as is prescribed and may be staked on any day.

25. Section 42 of the said Act is repealed.

26.—(1) Subsections 43 (1), (2) and (3) of the said Act are repealed.

(2) Subsection 43 (5) of the said Act is amended by striking out “and Communications” in the third line.

27.—(1) Subsection 44 (1) of the said Act is repealed and the following substituted therefor:

Rates for
licences of
occupation

(1) Notwithstanding the provisions of a licence of occupation, there shall be paid, in advance, the prescribed annual rental for the licence of occupation.

(2) Subsection 44 (6) of the said Act is repealed and the following substituted therefor:

Lease may
be issued
under s. 94

(6) The holder of a licence of occupation, upon application in writing therefor and upon the surrender of the licence of occupation, may be issued a lease under section 94 and the rental for each year of the term thereof shall be that prescribed for the purposes of section 94 for years subsequent to the first year of a term.

28. Sections 45, 46, 47 and 48 of the said Act are repealed.

29. Section 50 of the said Act is amended by adding thereto the following subsection:

Deemed
substantial
compliance

(2) The staking out of a mining claim shall be deemed to be in substantial compliance with the requirements of this Act and the regulations even if there is a failure to comply with a number of specific staking requirements if,

- (a) the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity; and
- (b) it is apparent that an attempt has been made in good faith by the licensee to comply with the requirements of this Act and the regulations.

30. Section 51 of the said Act is repealed and the following substituted therefor:

51.—(1) A licensee who has staked out a mining claim shall make an application in the prescribed form to the recorder accompanied by the prescribed fee and a sketch or plan showing the prescribed information to record the claim not later than thirty-one days after the day on which staking was completed.

Application
to record
mining claim

(2) Priority of completion of staking shall prevail where two or more licensees make application to record the staking of all or a part of the same lands.

Priority of
completion
prevails

(3) Where one of the applications made by two or more licensees to record the staking of a mining claim is entitled to priority under subsection (2), the recorder shall cancel the other application or applications and shall by registered letter mailed not later than the following day notify the other licensee or licensees of the recorder's action and the reason therefor.

Notice to
other licensee
or licensees

31. Section 52 of the said Act is repealed.

32.—(1) Subsection 54 (1) of the said Act is amended by striking out "unless a prior application is already recorded and subsisting for the same, or for any substantial part of the same lands or mining rights" in the fourth, fifth and sixth lines.

(2) Subsection 54 (2) of the said Act is amended by inserting after "claim" in the fourth line "that has priority under subsection 51 (2)" and by striking out "licensee" in the twelfth line and inserting in lieu thereof "person".

(3) Subsections 54 (5), (6), (7) and (8) of the said Act are repealed.

(4) Subsection 54 (9) of the said Act is repealed and the following substituted therefor:

(9) There shall be added to each claim number the prefix allotted to the mining division in which the claim is situate.

Division
prefix added

33. Section 55 of the said Act is repealed and the following substituted therefor:

Metal tags

55.—(1) Metal tags and duplicate tags shall be provided by the Ministry on payment of the prescribed fee and may be used by any licensee in staking out claims in the prescribed manner and within the prescribed time.

Transfer of tags

(2) Metal tags and duplicate tags do not expire but may not be re-used.

Cancellation of claim where tags not affixed

(3) Upon receipt of a written report of an inspector or other officer appointed under this Act that the metal tags have not been affixed in the prescribed manner or within the prescribed time the recorder shall cancel the claim and shall by registered letter mailed not later than the day following the cancellation notify the claim holder of the recorder's action and the reason therefor.

34.—(1) Subsection 56 (1) of the said Act is amended by inserting after "by" in the first line "a detailed statement of claim and an" and by striking out "licensee" in the third line and in the fifth line and inserting in lieu thereof in each instance "person".

(2) Subsection 56 (2) of the said Act is repealed and the following substituted therefor:

Copy to be sent to recorded holder

(2) A copy of the dispute, statement of claim and affidavit shall be left by the disputant with the recorder who shall, not later than the next day after the filing of the dispute, transmit the copy by registered mail to the recorded holder or holders of the mining claim affected thereby, and, if the copy is not left, the recorder may refuse to file or note the dispute or may collect from the disputant the prescribed fee per page for making the copy.

(3) Subsection 56 (5) of the said Act is repealed and the following substituted therefor:

When not to be received

(5) A dispute shall not be received or entered against a claim,

- (a) after one year from the recording of the claim;
- (b) after the first prescribed unit of assessment work has been performed and filed and, where necessary, approved; or
- (c) except by leave of the Commissioner,

- (i) after the validity of the claim has been adjudicated upon by the recorder or by the Commissioner, or
- (ii) after it has been on record for sixty days and has already had a dispute entered against it.

(5a) Where a dispute is entered against a claim after the first prescribed unit of assessment work has been performed and filed but before the assessment work has been approved, where approval is necessary, the dispute shall be deemed to have been resolved in favour of the holder or holders of the claim if the assessment work is subsequently approved and the note of the dispute entered on the record of the claim shall be struck out by the recorder who shall by registered letter mailed not later than the following day notify the disputant of the recorder's action and the reason therefor.

Where
assessment
work
subsequently
approved

(4) Section 56 of the said Act is amended by adding thereto the following subsections:

(7) Notwithstanding clause 28 (c), a transferee who has acquired a mining claim in good faith may re-stake or cause to be re-staked the claim or any part thereof at any time and, upon filing with the recorder a notice in the prescribed form of re-staking, the recorder may, upon notice to all interested parties, order that the re-staked claim shall be deemed to have been recorded on the date of the recording of the original claim or any part thereof that has been re-staked.

Re-staking
claim

(8) In an order made under subsection (7), the recorder may include such provisions as he or she considers proper to provide that orders, assessment work reports, instruments or other notations which had been entered against the original claim be entered in the record book in respect of the re-staked mining claim.

Entry of
orders, etc.,
against re-
staked claim

35. Sections 57, 58 and 59 of the said Act are repealed.

36.—(1) Subsection 59a (1) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 48, section 1, is repealed and the following substituted therefor:

(1) A recorder may by order relieve an unpatented mining claim that is subject to forfeiture as a result of an administrative error on the part of the Crown from the forfeiture.

Relief from
forfeiture

(2) Subsection 59a (4) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 48, section 1, is repealed and the following substituted therefor:

Extension of
time

(4) An order under subsection (1) or (3) may grant an extension of time for performing and reporting any work required to be performed or for applying and paying for a lease in respect of the claim or provide for the payment of any fees in respect of the claim.

37. Subsections 60 (1), (2), (3) and (4) of the said Act are repealed and the following substituted therefor:

Rights in
claim

(1) The staking out or the filing of an application for or the recording of a mining claim, or the acquisition of any right or interest in a mining claim by any person or all or any of such acts, does not confer upon that person,

- (a) any right, title, interest or claim in or to the mining claim other than the right to proceed as in this Act provided to perform the prescribed assessment work or to obtain a lease from the Crown and, prior to the performance, filing and approval of the first prescribed unit of assessment work, the person is merely a licensee of the Crown and after that period and until he or she obtains a lease the person is a tenant at will of the Crown in respect of the mining claim; or
- (b) any right to take, remove or otherwise dispose of any minerals found in, upon or under the mining claim.

38. Section 62 of the said Act is repealed and the following substituted therefor:

Permission to
test mineral
content

62.—(1) The Minister may give written permission, subject to such conditions as are prescribed, to mine, mill and refine mineral bearing substance from an unpatented mining claim for the purpose of testing mineral content.

Conditions

(2) Permission granted under subsection (1) shall be for a specified time and shall cover a specified quantity of mineral bearing substance.

Sale of end
product

(3) The end product of mining, milling and refining permitted under subsection (1), except as provided in subsection (4), shall not be sold or otherwise disposed of until the mining claim from which the minerals were taken is leased under this Act.

Disposition
of proceeds

(4) Subsection (3) does not apply where the Minister gives written permission for the sale or disposition and where the

Minister does so, the sale or disposition shall be in accordance with such terms as the Minister may impose.

39. Section 63 of the said Act is repealed.

40. Subsection 64 (2) of the said Act is amended by adding at the commencement thereof “Unless ordered otherwise by the Minister”.

41. Section 70 of the said Act is amended by striking out “may” in the second line and inserting in lieu thereof “shall”.

42.—(1) Section 71 of the said Act is amended by striking out “nor shall any such instrument be recorded without an affidavit in the prescribed form, attached to or endorsed thereon, made by a subscribing witness to the instrument” in the eighth, ninth, tenth and eleventh lines.

(2) The said section 71 is further amended by adding thereto the following subsections:

(2) Any such instrument shall not be recorded unless an affidavit in the prescribed form, attached thereto or endorsed thereon, is made by a subscribing witness to the instrument.

Affidavit of
execution

(3) Subsection (2) does not apply to the execution of an instrument by a corporation under its seal.

Corporations

43. Subsection 74 (3) of the said Act is repealed.

44.—(1) Subsection 75 (3) of the said Act is repealed and the following substituted therefor:

(3) The certificate is of no effect and does not constitute notice to any person of the proceeding until it is filed.

Not to
constitute
notice until
filed

(2) Subsection 75 (6) of the said Act is amended by striking out “upon the latter becoming, if he is not before, a licensee” in the fifteenth and sixteenth lines.

(3) Subsection 75 (7) of the said Act is amended by striking out “a fee of \$1, which” in the second and third lines and inserting in lieu thereof “any required fee and such”.

45. The heading preceding section 76 of the said Act is struck out and the following substituted therefor:

ASSESSMENT WORK

46. Section 76 of the said Act is repealed and the following substituted therefor:Assessment
work

76.—(1) The holder of a mining claim shall, following the recording of the claim, perform such annual units of assessment work as are prescribed.

Report

(2) Subject to subsection (3), every mining claim holder shall, not later than the anniversary date, file in the office of the recorder or such other location as is prescribed a report in the prescribed form of the assessment work done for the purpose of complying with subsection (1), together with such other information as may be prescribed.

Idem

(3) The report mentioned in subsection (2) shall, in respect of any specified type of assessment work, be filed not later than such date earlier than the anniversary date as may be prescribed for that type of assessment work.

Credits
measured in
dollars spent

(4) For the purpose of subsection (1), assessment work credits shall be measured in terms of dollars spent.

47. Sections 77 and 78 of the said Act are repealed and the following substituted therefor:Types of
work eligible
for credits,
etc.

77.—(1) The types of work that are eligible for assessment work credits, the method of calculating and approving the credits for work performed and the distribution of credits for work performed to mining claims shall be determined in such manner as is prescribed.

Prospecting
and regional
surveys

(2) Prospecting and regional surveys performed on Crown lands before the staking of a mining claim are eligible for assessment work credits in such manner as is prescribed.

Work on
patented
mining claims

(3) Exploration work performed on patented mining claims may be allocated as assessment work to contiguous unpatented mining claims in the prescribed manner.

48. Section 79 of the said Act is repealed and the following substituted therefor:Computing
time for
performance
of assessment
work

79.—(1) In computing the time within which work upon a mining claim is required to be performed or within which application and payment for a lease may be made,

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cc. 173, 413

(a) if a permit under the *Forest Fires Prevention Act* or the *Public Lands Act* that is necessary for the begin-

ning or carrying on of work under this Act is refused or the performance of such work is prohibited under those Acts or any other Act, or the holder defers the start of work or is delayed in its performance at the request, or by the actions, of the Crown, the time during which such refusal, prohibition, deferment or delay subsists, if the holder provides the Commissioner with satisfactory evidence of such refusal, prohibition, deferment or delay; or

- (b) the time during which proceedings in respect of the mining claim are pending before the Supreme Court, the Commissioner or the recorder, where the Commissioner is satisfied that any delay in settling the matter is not the fault of the holder,

shall be excluded, and the Commissioner may make an order fixing the date or dates by which the next or any prescribed units of work shall be performed and reported or by which an application and payment for lease may be made.

(2) Where the time for doing something under this Act is excluded, the next anniversary date after the exclusion in respect of the mining claim involved shall be deemed to be the date that falls after the anniversary date that would have occurred, except for this provision, by the number of days that equals the number of days of the exclusion, and all subsequent anniversary dates shall be adjusted accordingly.

Anniversary
date changed

(3) Notwithstanding anything in this Act, where in the opinion of the Minister special circumstances exist, the Minister may exclude the time within which work upon a mining claim is required to be performed or within which application and payment for lease may be made, and may by order fix the anniversary date or dates by which the next or any subsequent periods of work shall be performed and reported or by which application and payment for lease may be made.

Special
circumstances

49. Section 80 of the said Act is repealed.

50.—(1) Subsection 83 (1) of the said Act is repealed and the following substituted therefor:

(1) The holder of a mining claim may abandon the claim at any time by giving notice in writing in the prescribed form to the recorder of the holder's intention to do so.

Right of
mining claim
holder to
abandon
claim

(2) Subsection 83 (2) of the said Act is amended by striking out "licensee" in the sixth line and inserting in lieu thereof "holder".

51. Section 84 of the said Act is repealed and the following substituted therefor:

Deemed
abandonment
of claim

84.—(1) Non-compliance by the licensee or holder of a mining claim with any requirement of this Act or the regulations as to the time or manner of the staking out and recording of a mining claim or with a direction of the recorder in regard thereto, within the time limited therefor, shall be deemed to be an abandonment, and the claim shall, without any declaration, entry or act on the part of the Crown or by any officer, unless otherwise ordered by the Commissioner, be forthwith opened to prospecting and staking out.

Saving

(2) Subsection (1) does not apply after one year from the recording of the claim, or where the first prescribed unit of assessment work has been performed and filed and, where necessary, approved.

52.—(1) Subsection 85 (1) of the said Act is amended by striking out “patent” in the second line and inserting in lieu thereof “lease”.

(2) Clause 85 (1) (a) of the said Act is repealed.

(3) Clause 85 (1) (c) of the said Act is repealed and the following substituted therefor:

(c) if the prescribed work is not duly performed and reported as required by section 76 unless an application and payment for a lease of the mining claim is made under section 94.

(4) Clauses 85 (1) (d) and (e) of the said Act are repealed.

(5) Subsection 85 (2) of the said Act is amended by striking out “licensee” in the second line and inserting in lieu thereof “person”.

53. Sections 86 and 87 of the said Act are repealed and the following substituted therefor:

Extension of
time by
recorder

86.—(1) On application therefor being made to the recorder within thirty days before the expiration of the time for filing a report of assessment work, the recorder may allow an extension of time for performing and filing the report of the assessment work on such conditions as are prescribed.

Re-staking

(2) Where forfeiture or loss of rights has occurred, the lands, mining rights or mining claims concerned are not open for staking until 7 o'clock in the forenoon of the day immedi-

ately following that upon which forfeiture or loss of rights occurred.

(3) An order made by the recorder under this section comes into effect and shall be deemed to have been recorded at the time that the application was received in the office of the recorder, notwithstanding that such order may not have been immediately entered in the record book.

When order
takes effect

(4) The recorder, upon a forfeiture or abandonment of or loss of rights in a mining claim, shall forthwith enter a note thereof, with the date of entry, upon the record of the claim and mark the record "Cancelled", and shall post up forthwith in the recorder's office a notice of cancellation.

Cancellation
of record

54. Section 88 of the said Act is repealed and the following substituted therefor:

88. Where a licensee in whose name a mining claim has been staked out dies before the claim is recorded or where the holder of a claim dies before issue of the lease for the claim, no other person is, without leave of the Commissioner, entitled to stake out or record a mining claim upon any part of the same lands or to acquire any right, privilege or interest in respect thereof within twelve months after the death of such licensee or holder, and the Commissioner may at any time make such order as the Commissioner considers just for vesting the claim in the representative of such holder and extending the time for performing the work or applying for lease, notwithstanding any lapse, abandonment, cancellation, forfeiture or loss of rights under any provision of this Act.

Death of
licensee or
holder

55. Subsection 89 (1) of the said Act is repealed and the following substituted therefor:

(1) The Commissioner or the recorder may inspect or order an inspection of, and an inspector or other officer appointed by the Minister may inspect, a mining claim at any time with or without notice to the holder for the purpose of ascertaining whether this Act has been complied with, but after one year from the recording of the claim, or after the first prescribed unit of assessment work has been performed, filed and approved, no such inspection shall, unless ordered by the Minister under subsection 90 (5), be made for the purpose of ascertaining whether the claim has been staked out in the prescribed manner.

Inspection by
Commis-
sioner,
recorder or
inspector

56.—(1) Subsection 90 (4) of the said Act is amended by striking out "licensee" in the seventh line and inserting in lieu thereof "holder".

(2) Section 90 of the said Act is amended by adding thereto the following subsection:

Inspection
ordered by
Minister

(5) Notwithstanding subsections 56 (5) and 84 (2), the Minister may challenge the validity of a mining claim at any time during the life of the claim and may direct the recorder to inspect the claim in accordance with section 89.

57. The said Act is further amended by adding thereto the following section:

Notice of
intention to
perform
assessment
work

91a.—(1) If there is an owner of the surface rights of the land comprising a mining claim, where a holder of the mining claim first proposes to do ground assessment work on such land, the holder shall give notice in the prescribed form to the owner of the surface rights of the holder's intention to perform the work.

Entry on
land to
perform work

(2) A person who has given notice under this section may enter on the land and perform the work at any time immediately following the day the notice is given.

Where work
not to be
recorded

(3) A recorder shall not record ground assessment work unless,

- (a) the holder files with the recorder a certificate in the prescribed form establishing that the required notice was given; or
- (b) the recorder determines that it is not feasible in the circumstances to give notice to the owner of the surface rights.

58. Section 92 of the said Act is repealed and the following substituted therefor:

Definition

92.—(1) In this section and in section 91a, "owner of the surface rights" means a person to whom the surface rights of land have been granted, sold, leased or located.

Right of
owner of
surface rights
to compen-
sation

(2) Where there is an owner of surface rights of land or where land is occupied by a person who has made improvements thereon that, in the opinion of the Minister, entitles that person to compensation, a person who,

- (a) prospects, stakes out or causes to be staked out a mining claim or an area of land for a boring permit;

- (b) formerly held a mining claim or an area of land for a boring permit that has been cancelled, abandoned or forfeited;
- (c) is the holder of a mining claim or an area of land for a boring permit and who performs assessment work; or
- (d) is the lessee or owner of mining lands and who carries on mining operations,

on such land, shall compensate the owner of the surface rights or the occupant of the lands, as the case may be, for damages sustained to the surface rights by such prospecting, staking out, assessment work or operations.

(3) Every person who damages mineral exploration workings or claim posts, line posts, tags or surveyed boundary markers delineating mining lands shall compensate the holder of the mining claim or the owner or lessee of the mining lands, as the case may be, for damages sustained.

Right of holder of mining claim, etc., to compensation

(4) In default of agreement and upon application made in the prescribed form by either party, the amount and the time and manner of payment of compensation under subsection (2) or (3) shall be determined by the Commissioner after a hearing and, subject to appeal to the Divisional Court where the amount claimed exceeds \$1,000, the Commissioner's order is final.

Determination of compensation by Commissioner

(5) The Commissioner may order the giving of security for payment of the compensation and may prohibit, pending the determination of the proceeding or until the compensation is paid or secured, further prospecting, staking out or working by any person.

Prohibiting work pending settlement

(6) The compensation is a special lien upon any mining claim or mining lands, as the case may be, and no further prospecting, staking out or performing of work, except by leave of the Commissioner, shall be done by any person after the time fixed for the payment or securing of the compensation, unless the compensation has been paid or secured as directed.

Lien for compensation

(7) The Commissioner, on notice to all interested parties and for good cause shown, on such terms as seem just, may by subsequent order or award at any time change, supplement, alter, vary or rescind any order made under this section.

Power of Commissioner to vary, etc., order

Priorities

(8) In a hearing under subsection (4), the Commissioner shall take into account which of the rights was applied for first and, except where injustice would result, shall give the holder of those rights due priority in the consideration of the dispute between the parties.

Filing of agreement or order in office of recorder

(9) Where unpatented mining claims are affected by an agreement entered into in respect of the compensation referred to in subsection (2), or by an order made under subsection (4), the agreement or a certified copy of the order, as the case may be, may be filed by the person to whom the compensation is payable in the office of the recorder upon payment of the prescribed fee.

Registration of order or agreement

(10) Where an unpatented mining claim is subsequently leased, the Minister shall cause any agreement or order filed in the recorder's office under subsection (9) that affects the leased lands to be registered against the lands in the proper land registry office and the person to whom the compensation is payable is entitled to enforce the terms of the agreement or order against the lessee and, subject to the *Registry Act* and the *Land Titles Act*, against any subsequent lessee of the land.

R.S.O. 1980,
cc. 44S, 230

59.—(1) Subsections 94 (1), (2), (3), (4) and (5) of the said Act are repealed and the following substituted therefor:

Right to lease of claim

(1) Upon compliance with this Act and the regulations and upon payment of the rent for the first year, the holder of a mining claim is entitled to a lease of the claim.

Application for lease

(2) The application and payment for a lease may be made to the recorder at any time after the first prescribed unit of assessment work on a mining claim is performed, filed and, if necessary, approved, and the application shall be accompanied by,

- (a) a certificate of performance of the prescribed units of assessment work that are required to be performed as of the time of application;
- (b) a plan of survey where required under section 108 or 109;
- (c) an agreement or an order of the Commissioner indicating that surface rights compensation, if any, has been paid, secured or settled; and
- (d) the prescribed fee.

(3) A lease under this section shall be for a term of twenty-one years at the prescribed rental, payable in advance, for the first year and at the prescribed rate for each subsequent year.

Term of
lease

(4) The holder of a mining claim may elect to apply for a lease of the mining rights only.

Lease of
mining rights

(5) Where a lease under this section is for mining rights only, the rental shall be at the prescribed rate for such a lease.

Rental

(2) Subsection 94 (6) of the said Act is repealed.

(3) Subsections 94 (8) and (9) of the said Act are repealed and the following substituted therefor:

(8) The annual rental for a renewal lease is the prescribed amount, payable in advance.

Renewal
lease rental

(9) The Minister shall refuse to renew a lease unless,

Refusal to
renew lease

(a) the production of minerals has occurred continuously for more than one year since the issuance or last renewal of the lease; or

(b) the lessee has demonstrated to the satisfaction of the Minister a reasonable effort to bring the property into production.

(4) Subsection 94 (12) of the said Act is amended by striking out “prescribed by” in the second line and inserting in lieu thereof “set out in”.

(5) Subsections 94 (16), (17), (18), (19) and (20) of the said Act are repealed and the following substituted therefor:

(16) Any surface rights reserved in a lease or renewal thereof may be dealt with under the *Aggregate Resources Act*, 1989 or under the *Public Lands Act* or the regulations made under those Acts.

Disposition
of surface
rights
1989, c. 23
R.S.O. 1980,
c. 413

(17) Where the area of the mining claim exceeds by more than 15 per cent the prescribed size for a mining claim and the claim is not reduced in size under section 110, there shall be performed additional assessment work or moneys paid in lieu thereof as prescribed for the excess area.

Additional
work where
area of claim
exceeds
prescribed
size

(18) Where there is a group of contiguous claims held in the name of one claim holder and their average area does not exceed by more than 15 per cent the size prescribed for a min-

Contiguous
claims

ing claim, the Minister may direct that subsection (17) does not apply.

Where
additional
work
required

(19) Where additional work is required under subsection (17), the Minister may direct the time within which such work is to be performed and reported.

60.—(1) Subsections 95 (1) and (2) of the said Act are repealed and the following substituted therefor:

Definition

(1) In this section, “lease” means a lease of surface and mining rights or of mining rights issued under,

(a) section 47, 52 or 100 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or a predecessor thereof; or

(b) subsection 190 (3) of this Act, or a predecessor thereof,

and includes a renewal of such a lease.

Amount of
rent

(2) Subject to subsection (3), notwithstanding the provisions of a lease, the annual rental for a lease is the prescribed amount.

(2) Subsection 95 (4) of the said Act is repealed and the following substituted therefor:

Lease not
renewable

(4) A lease referred to in this section is not renewable.

(3) Subsection 95 (6) of the said Act is amended by striking out “has not been renewed under subsection (4) or” in the first and second lines.

(4) Subsection 95 (9) of the said Act is repealed and the following substituted therefor:

Lease may
be issued
under s. 94

(9) The holder of a lease, upon application in writing therefor and upon the surrender of the lease and upon meeting the conditions set out in subsection 94 (9), may be issued a lease under section 94 for a term of twenty-one years and the rental for each year of the term thereof shall be that prescribed for the purposes of section 94 for years subsequent to the first year of a term.

61. Section 96 of the said Act is repealed and the following substituted therefor:

96.—(1) The holder of a lease issued under this Act, upon application in the prescribed form to the Minister, accompanied by the prescribed fee and upon the surrender of the lease, may be issued in exchange for that lease, on such terms and conditions as the Minister considers appropriate, two or more replacement leases.

Exchange of
lease

(2) Replacement leases issued under subsection (1) shall cover together the same lands as were covered by the surrendered lease, shall be for a term equal to the balance of the term of the surrendered lease and shall be at the same rental rate per hectare as that lease.

Terms of
replacement
leases

62. Subsection 97 (4) of the said Act is repealed and the following substituted therefor:

(4) The annual rental of a lease or renewal under this section is the prescribed amount, payable in advance.

Amount of
rent

63. Subsection 102 (2) of the said Act is repealed and the following substituted therefor:

(2) Any surface rights reserved under this section may be dealt with under the *Aggregate Resources Act, 1989* or under the *Public Lands Act* or the regulations made under those Acts.

Disposition
of surface
rights
1989, c. 23
R.S.O. 1980,
c. 413

64.—(1) Subsection 108 (1) of the said Act is amended by striking out “patent” in the first line.

(2) Subsection 108 (2) of the said Act is repealed and the following substituted therefor:

(2) Subject to the *Surveys Act*, the prescribed methods and procedures shall be followed in the surveying of mining claims.

Prescribed
methods of
surveying
R.S.O. 1980,
c. 493

(3) Subsection 108 (5) of the said Act is repealed.

(4) Subsections 108 (6), (7), (8) and (9) of the said Act are repealed and the following substituted therefor:

(6) Where a perimeter survey is made under subsection (3), the rental shall be computed on the total area of the claims within the perimeter survey and, where the average area of the claims within the perimeter survey exceeds by more than 15 per cent the prescribed size for a mining claim, there shall be performed additional assessment work or moneys paid in lieu thereof as prescribed for the excess area.

Additional
work where
area exceeds
prescribed
size

Where
additional
work
required

(7) Where additional work is required under subsection (6), the Minister may set out in an order the time within which such work is to be performed and recorded.

Inspection
before
perimeter
survey made

(8) Before a perimeter survey is made, the Minister may order the inspection of the mining claims proposed to be included in the perimeter survey and an inspector or other officer of the Ministry shall prepare and submit to the Minister a report and plan according to the instructions provided by the Minister and the survey shall not be directed to be made unless the Minister is satisfied that the requirements of this Act have been complied with.

Fee

(9) The fee for an inspection under subsection (8) is the prescribed amount, payable in advance, and the Minister may require the applicant to provide the inspector with suitable transportation to the location of the claims.

65.—(1) Subsection 109 (1) of the said Act is amended by striking out “patent” in the first line and by inserting after “claim” in the seventh line “or the perimeter survey of mining claims”.

(2) Subsection 109 (2) of the said Act is repealed.

66.—(1) Subsection 110 (1) of the said Act is amended by striking out “acreage” in the third line and in the fourth line and inserting in lieu thereof in each instance “size”.

(2) Subsection 110 (2) of the said Act is amended by striking out “licensee” in the third line and in the fourteenth line and inserting in lieu thereof in each instance “holder”.

67. The subheading preceding section 112 of the said Act is struck out and the following substituted therefor:

PETROLEUM AND NATURAL GAS

68. Parts V and VI of the said Act are repealed.

69. The said Act is further amended by adding thereto the following Part:

PART VII

SURFACE MINING OF NON-METALLIC MINERALS

Surface
mining of
non-metallic
minerals

118.—(1) Any person who proposes to commence the surface mining of non-metallic minerals, excluding natural gas and petroleum, on Crown land not in a part of Ontario that

has been designated under the *Pits and Quarries Control Act* or under subsection 5 (2) of the *Aggregate Resources Act*, 1989, may proceed,

R.S.O. 1980,
c. 378
1989, c. 23

- (a) by applying for and obtaining an aggregate permit or a licence under the *Aggregate Resources Act*, 1989; or
- (b) by complying with the requirements of Part II of this Act.

(2) Any person who proposes to commence the surface mining of non-metallic minerals, excluding natural gas and petroleum, on Crown land in a part of Ontario that has been designated under the *Pits and Quarries Control Act* or under subsection 5 (2) of the *Aggregate Resources Act*, 1989, in addition to an aggregate permit or a licence issued under the *Aggregate Resources Act*, 1989, may also obtain a lease from the Crown for the lands affected by complying with the provisions of Part II of this Act.

Lease of
Crown land

119. Notwithstanding that an aggregate permit or a licence has been obtained under the *Aggregate Resources Act*, 1989, any licensee under this Act may stake out a mining claim or claims on Crown land affected by the permit or licence, in which case the provisions of this Act apply and any question of property damage shall be determined in the manner set out in section 92.

Staking out
of mining
claim

70.—(1) Subsection 131 (1) of the said Act is amended by striking out “licensees” in the third line and inserting in lieu thereof “persons”.

(2) Subsection 131 (2) of the said Act is amended by striking out “arising before the issue of a certificate of record of a mining claim” in the first and second lines.

(3) Subsection 131 (6) of the said Act is repealed and the following substituted therefor:

- (6) The recorder may make an order directing a holder,
 - (a) to move, remove or alter corner posts, line posts or witness posts and the writing or inscribing thereon;
 - (b) to blaze, re-blaze, move or alter existing or missing claim lines;

Recorder
may order
the removal
of witness
posts, etc.

- (c) to place or replace metal tags that are missing or have been removed or destroyed after having been affixed to any posts; or
- (d) to place or replace missing or defective posts and to affix tags to such posts,

and the recorder shall set out in the order the time within which the work shall be completed and reported to the recorder.

Claim
deemed in
compliance
with Act

(6a) Where the work set out in an order under subsection (6) has been completed within the time set out in the order, the claim shall thereafter be deemed to be in compliance with this Act.

(4) Subsection 131 (7) of the said Act is repealed and the following substituted therefor:

Recorder
may extend
time or
cancel claim

(7) Where the work set out in an order under subsection (6) has not been completed within the time set out in the order, the recorder may extend the time for completing the work or may cancel the claim or claims on which the work was to have been done and shall, in the case of cancellation, by registered letter, mailed not later than the next day after the cancellation, notify the holder of the recorder's action and the reason therefor.

(5) Subsection 131 (8) of the said Act is repealed and the following substituted therefor:

Application

(8) This section applies to the manner in which the metal tags have been affixed to the corner posts notwithstanding that the time prescribed for affixing the tags has not expired.

71. Subsection 133 (2) of the said Act is repealed and the following substituted therefor:

Where public
interest
affected

(2) Where, in the opinion of the Minister, the public interest is affected by a decision, act or thing mentioned in subsection (1), an officer or employee of the Ministry designated by the Minister for that purpose may,

- (a) be added as a party to an appeal taken under subsection (1); or
- (b) take an appeal under subsection (1), in which case no fee in respect of the appeal is payable.

72.—(1) Subsection 135 (1) of the said Act is repealed and the following substituted therefor:

(1) Application to the Commissioner for an appointment for a hearing may be made in writing by any party to the proceeding upon such notice and to such persons as the Commissioner directs and shall be accompanied by the prescribed fee for recording any order made by the Commissioner in the matter.

Application
for
appointment
for hearing

(2) Subsection 135 (4) of the said Act is repealed and the following substituted therefor:

(4) In any matter or proceeding, other than an appeal, in any case where leave to take the proceeding is necessary, the Commissioner may give leave upon such terms as to security for costs or otherwise as the Commissioner considers just.

Leave for
hearing

73.—(1) Clause 137 (1) (b) of the said Act is amended by inserting after “things” in the third line “under oath or otherwise”.

(2) Subsection 137 (1) of the said Act is amended by striking out “and” at the end of clause (d) and by adding thereto the following clauses:

- (f) upon the application of a party to the proceedings, order the examination of any other party before an official examiner appointed under the *Courts of Justice Act, 1984*; and
- (g) order any party to the proceedings who intends to present evidence at the hearing to file with the Commissioner and serve on each of the other parties, prior to the appearance of any witness and within such time as the Commissioner directs, a statement indicating the evidence intended to be relied upon.

1984, c. 11

74.—(1) Section 150 of the said Act is amended by adding thereto the following subsections:

(1a) Every order or judgment of the Commissioner shall take effect immediately upon its signing, subject to any express provision therein.

When order
of Commis-
sioner takes
effect

(1b) Notwithstanding section 17 of the *Statutory Powers Procedure Act*, the reasons for a decision of the Commissioner may be delivered orally.

Oral reasons
R.S.O. 1980,
c. 484

Filing of
order

(1c) Any party to a proceeding may cause an order or judgment of the Commissioner to be filed in the office of the recorder.

Notice of
filing

(1d) The recorder shall forthwith give notice in writing of the filing by registered mail or otherwise to the solicitors of the parties appearing by solicitor and to the parties not represented by a solicitor.

Filing of
duplicate
order

(1e) Where the order or judgment is not filed with the recorder within fifteen days of the order being signed, the Commissioner shall cause a duplicate thereof to be filed with the recorder.

(2) Subsections 150 (2) and (3) of the said Act are repealed and the following substituted therefor:

Transmission
of evidence,
etc., to
recorder

(2) The Commissioner shall transmit the evidence, the exhibits, the statement, if any, of view or of special knowledge or skill, and the reasons for any order or judgment to the recorder.

75. Section 151 of the said Act is repealed and the following substituted therefor:

Final order
or judgment
sent to
parties

151. Where a decision of the Commissioner finally disposes of the matter in question so far as the Commissioner is concerned, the Commissioner shall send the order or judgment to the parties by registered mail.

76. Section 152 of the said Act is repealed and the following substituted therefor:

Certified
copy of order
or judgment

152. Any party to a proceeding is entitled on payment of the prescribed fee to a certified copy of any order or judgment.

77. Part IX of the said Act is repealed and the following substituted therefor:

PART IX

OPERATION OF MINES

Definitions

160.—(1) In this Part,

“abandoned” means the proponent has ceased or suspended indefinitely advanced exploration, mining, or mine production on the site, without rehabilitating the site;

- “advanced exploration” means the excavation of an exploratory shaft, adit, or decline, the extraction of material in excess of the prescribed quantity, the installation of a mill for test purposes or any other prescribed work;
- “closed out” means that all the requirements of an accepted closure plan have been complied with and is the final stage of closure;
- “closure” means the temporary suspension, inactivity or close out of advanced exploration, mining or mine production;
- “closure plan” means a plan prepared in the prescribed manner to rehabilitate a project at any stage of closure and includes the information, particulars, maps and plans prescribed, as well as provision in the prescribed manner of financial assurance to the Crown for the performance of the requirements of the closure plan;
- “Director” means the Director of Mine Rehabilitation for the mining division or divisions in which is situate the land in respect of which an act, matter or thing is to be done under this Part;
- “inactivity” means that advanced exploration, mine production and mining operations on a site have been suspended indefinitely in accordance with a closure plan, and although protective measures are in place on the site, the site is no longer being monitored by the proponent on a continuous basis;
- “mine production” means mining that is producing any mineral or mineral-bearing substance either for immediate sale or for stockpiling for ultimate sale;
- “progressive rehabilitation” means rehabilitation done continually and sequentially, within a reasonable time, during the entire period that the project continues;
- “project” means a mine or the activity of advanced exploration, mining or mine production;
- “proponent” means the holder of an unpatented mining claim or licence of occupation or an owner as defined in paragraph 21 of section 1;
- “protective measures” means steps taken in accordance with the prescribed standards to prevent personal injury or property damage that is reasonably foreseeable as a result of closure commencing;

“rehabilitate” means measures taken in accordance with the prescribed standards to treat the land or lands on which advanced exploration, mining or mine production has occurred so that the use or condition of the land or lands,

(a) is restored to its former use or condition, or

(b) is made suitable for a use that the Director sees fit,

and includes taking protective measures;

“site” means the land or lands on which a project is located;

“temporary suspension” means advanced exploration, mining or mine production have been suspended, in accordance with an accepted closure plan, on either a planned or unplanned basis, but the site is being monitored on a continuous basis by the proponent and protective measures are in place.

Application
of Part

(2) For greater certainty, but without restricting the scope of this Part, this Part applies to projects including,

(a) the underground mining of minerals, excluding natural gas, petroleum and salt by brining method;

(b) the surface mining of metallic minerals;

(c) the surface mining of non-metallic minerals, excluding natural gas and petroleum, on land that is neither Crown land nor land in parts of Ontario that have been designated under the *Pits and Quarries Control Act* or under subsection 5 (2) of the *Aggregate Resources Act, 1989*;

(d) advanced exploration on mining lands.

R.S.O. 1980,
c. 378
1989, c. 23

DIRECTORS AND MINERAL DEVELOPMENT OFFICERS

Mineral
Development
Officers

161.—(1) The Minister may appoint as Mineral Development Officers such employees of the Ministry as the Minister considers necessary, whose function it is to co-ordinate and expedite communication between the mining industry, the public and affected ministries and agencies of the Government of Ontario.

Directors

(2) The Minister may appoint an officer or employee of the Ministry as Director of Mine Rehabilitation for each such mining division or group of mining divisions as the appointment specifies.

ADVANCED EXPLORATION

161a.—(1) No proponent shall commence or recommence advanced exploration without providing the Director with notice in the form and manner prescribed and the project may proceed unless, within thirty days of receiving the notice, the Director in writing has required the proponent to, Closure plan,
advanced
exploration

- (a) give public notice at the prescribed time and in the prescribed form and manner;
- (b) submit a proposed closure plan; or
- (c) comply with both clauses (a) and (b).

(2) Where the Director has required the proponent to give public notice only under clause (1) (a), the project may proceed after public notice has been given. Where public
notice only
required

(3) Where the Director has required the proponent to submit a proposed closure plan under clause (1) (b), Changes to
closure plan

- (a) the Director may by written notice require changes to the proposed closure plan; and
- (b) the project shall not proceed until the Director has accepted in writing the closure plan, and the public notice, if required under clause (1) (a), has been given.

MINE PRODUCTION

161b.—(1) No proponent shall commence or recommence mine production without, Closure plan,
mine
production

- (a) providing the Director with notice in the prescribed form and manner;
- (b) giving public notice at the prescribed time and in the prescribed form and manner;
- (c) submitting a proposed closure plan; and
- (d) receiving the Director's written acceptance of the closure plan required by clause (c).

(2) The Director may require changes to a proposed closure plan required by clause (1) (c) prior to accepting it. Changes to
closure plan

PROGRESSIVE REHABILITATION

Progressive
rehabilitation

161c. A proponent shall take all reasonable steps to progressively rehabilitate a site whether or not closure has commenced or an accepted closure plan is in place.

CLOSURE PLANS

Compliance
with closure
plan

161d.—(1) Every proponent whose project is subject to a closure plan accepted under this Part shall comply with the closure plan.

Notice
closure has
commenced

(2) Where closure commences on a site, subject to a closure plan, the proponent shall,

- (a) forthwith notify the Director in writing that closure has commenced; and
- (b) comply with the requirements of the closure plan.

Annual
report to
Director

(3) Where a project has commenced or recommenced under section 161a or 161b, within twelve months of the commencement or recommencement, and for every twelve-month period following thereafter while the project continues, the proponent shall submit annually to the Director a report prepared in the prescribed manner.

Submission
of, or
amendments
to, closure
plan

(4) If, on the receipt of the report required under subsection (3) or on the basis of information received from a rehabilitation inspector under subsection 161f (1), the Director has reasonable grounds for believing,

- (a) that the closure plan, including the financial assurance requirement, is inadequate to properly rehabilitate the site because the project has either expanded or other conditions have changed; or
- (b) in the case of an advanced exploration project not currently subject to a closure plan, the project has expanded or other conditions have changed to a point which necessitate a closure plan,

the Director may require by written notice the proponent to submit to the Director a proposed closure plan for the Director's consideration, or, where a closure plan is already in place, to submit proposed amendments to a closure plan, including proposals respecting an increase in the amount of financial assurance required to rehabilitate the site.

(5) Where a proponent plans to expand or alter a project, the proponent shall forthwith give written notice in the prescribed form to the Director.

Notice of expansion or alteration of project

(6) Where the Director has received either proposed amendments to existing closure plans or proposed closure plans under subsection (4), the Director may require changes to the proposed amendments or plan before notifying the proponent that the proposed amendments or plan are acceptable.

Changes to closure plan

(7) Upon receipt of the written notice of the Director that the proposed amendments or plan that may be required under subsection (4) are acceptable, the project shall operate subject to the plan or amended plan, as the case may be.

Project subject to plan or amended plan

FINANCIAL ASSURANCE

161e.—(1) The financial assurance required as part of a closure plan shall be in the form of cash, a letter of credit from a bank named in Schedule A to the *Bank Act* (Canada), a bond of a guarantee company approved under the *Guarantee Companies Securities Act* or another form of security acceptable to the Director and shall be in the amount specified in the closure plan accepted by the Director or any amendment thereto.

Form and amount of financial assurance
R.S.C. 1985, c. B-1
R.S.O. 1980, c. 192

(2) Where the Director has reasonable and probable grounds to believe that any rehabilitation measure required by the accepted closure plan in respect of which financial assurance was given has not been or will not be carried out in accordance with the closure plan, the Director by order may provide for the performance of the rehabilitation measure in the manner set out in subsection (5).

Order providing for performance of rehabilitation measure

(3) The Director shall give the proponent written notice of the Director's intention to issue the order referred to in subsection (2) at least fifteen days prior to the date the order is to be issued.

Notice

(4) Both the notice and the order under this section shall be directed to the proponent to whom the approval for the closure plan was issued or directed and to any person to the knowledge of the Director that has provided the financial assurance for or on behalf of the proponent to whom the approval of the closure plan was issued or shall be directed to the successor or assignee of such person.

Parties affected

(5) Upon the issuance of an order by the Director under subsection (2), the Crown may,

Realization of security

- (a) use any cash;
- (b) realize any bond or letter of credit; and
- (c) enforce any other security,

provided or obtained as the financial assurance for the performance of the rehabilitation measures and may carry out the rehabilitation measures, or appoint an agent to do so, as the Director considers necessary.

Application
for reduction
of financial
assurance

(6) A proponent may apply to the Director for a reduction of the financial assurance to an amount consistent with the financial requirements of the rehabilitation work left to be completed where,

- (a) work has been performed in accordance with the requirements of an accepted closure plan; or
- (b) a reduction in the financial assurance requirement is justified in a report submitted under subsection 161d (3).

REHABILITATION INSPECTORS

Rehabili-
tation
inspectors

161f.—(1) For the purposes of monitoring the closure of projects, including mines that have been abandoned, the Minister may designate in writing any person who may, but need not be, an employee of the Ministry as a rehabilitation inspector.

Inspections
by rehabili-
tation
inspector

(2) For the purpose of carrying out the duties and exercising the powers under this Part, a rehabilitation inspector may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, and in the exercise of that authority may,

- (a) enter into or onto any mining lands or premises connected or associated with any project or abandoned mine, other than a room or place actually used as a dwelling;
- (b) make such inspections, examinations, inquiries or tests considered necessary in order to determine the nature and extent of any existing or potential hazards on mining lands;
- (c) in any inspection, examination, inquiry or test, be accompanied and assisted by any person having special, expert or professional knowledge of any

matter relevant to the inspection, examination, inquiry or test;

- (d) request the production of any drawings, specifications, licence, document, record or report;
- (e) on giving a receipt therefor, remove any drawing, specifications, licence, document, record or report produced in response to a request under clause (d) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced them;
- (f) inspect any work related to rehabilitation necessary to complete a report to the Director under subsection (1); and
- (g) make reasonable inquiries of any person, orally or in writing.

(3) A proponent shall forthwith on request permit a rehabilitation inspector to carry out any inspection of any place, other than any room actually used as a dwelling, under subsection (2).

Inspection to be permitted

(4) No person shall hinder or obstruct a rehabilitation inspector in the lawful performance of duties or furnish the rehabilitation inspector with false information or refuse to furnish information required for the purposes of this Part and the regulations.

Obstruction prohibited

(5) Where a provincial judge or justice of the peace is satisfied on evidence upon oath by a rehabilitation inspector that there is reasonable ground for believing that it is appropriate for the administration of this Part or the regulations made thereunder for the rehabilitation inspector to do anything set out in subsection (2), and that the rehabilitation inspector may not be able to effectively carry out the duties assigned without an order under this section because,

Inspection warrant

- (a) a person has prevented the rehabilitation inspector from doing anything set out in subsection (2);
- (b) there is reasonable ground to believe that a person may prevent a rehabilitation inspector doing anything set out in subsection (2); or
- (c) it is impractical because of the remoteness of the place to be inspected or because of any other reason, for the rehabilitation inspector to obtain an

order under this section without delay if access is denied,

the judge or justice may issue or renew a warrant in the prescribed form authorizing the rehabilitation inspector named in the warrant to do anything set out in subsection (2) and specified in the warrant for the period of time set out in the order.

Search
warrant

(6) Where a provincial judge or justice of the peace is satisfied on evidence upon oath of a rehabilitation inspector that there is reasonable and probable ground for believing that,

- (a) an offence under this Part has been committed; and
- (b) the entry into and search of a place actually used as a dwelling will afford evidence as to the commission of the offence,

the judge or justice may issue or renew a warrant in the prescribed form authorizing the rehabilitation inspector named in the warrant to enter and search the room or place with such reasonable assistance as may be necessary and upon giving a receipt therefor to remove from the room or place any document or thing that may afford evidence of the offence for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the room or place from which they were removed.

When to be
executed and
expiry

(7) A warrant under subsection (5) or (6) shall be executed at reasonable times as specified in the warrant and shall state the date upon which it expires, which shall be not later than fifteen days after the warrant is issued.

Admissibility
of copies

(8) Copies of, or extracts from, documents or things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Identification

(9) Upon request, a rehabilitation inspector who exercises a power set out in subsection (2) shall identify himself or herself as a rehabilitation inspector either by the production of a copy of the rehabilitation inspector's designation or in some other manner and shall explain the purpose of the inspection.

EXISTING PROJECTS

Notice to
Director

161g.—(1) Within ninety days of the coming into force of this Part, every proponent of a producing mine or of a mine

from which production is temporarily suspended shall give a notice in writing to the Director that contains the prescribed information relating to that mine.

(2) On the Director receiving a notice under subsection (1), the Minister shall determine the period of time within which the proponent must submit to the Director a proposed closure plan in respect of that mine.

Determination of Minister of time for submission of closure plan

(3) The Director shall notify in writing a proponent who has given notice under subsection (1) of the period of time determined by the Minister within which the proponent must submit to the Director a proposed closure plan.

Notice to proponent by Director

(4) A proponent who has received a notice under subsection (3) shall submit the required closure plan to the Director within the period of time specified in the notice.

Submission of closure plan to Director

(5) The Director, within ninety days of the coming into force of this Part, may notify in writing any proponent of advanced exploration that has commenced before and is continuing on the day this Part comes into force of the period of time within which the proponent must submit a proposed closure plan.

Notice to submit closure plan

(6) A proponent who has received a notice under subsection (5) shall submit the required closure plan to the Director within the time specified in the notice.

Submission of closure plan to Director

(7) Prior to the Director informing the proponent that the closure plan required under subsection (4) or (6) is acceptable, the Director may by written notice require changes to the closure plan.

Changes to closure plan

(8) On receiving written notification from the Director that the closure plan required under subsection (4) or (6) is acceptable, the project shall operate subject to the closure plan and sections 161c, 161d, 161e and 161f shall apply.

Mine to operate subject to closure plan

161h.—(1) Notwithstanding section 161g, where a proponent takes steps to abandon the project on either an indefinite or permanent basis after the day this Part comes into force but before the Director informs the proponent that the closure plan required under subsection 161g (4) or (6) is acceptable, the proponent shall give written notice to the Director and shall take all reasonable steps to rehabilitate the site.

Where project abandoned after Part comes into force

(2) Where the Director has reasonable grounds for believing that a proponent has not complied with subsection (1), the Director may order the proponent to rehabilitate the site.

Order to rehabilitate site

Declaration
that mine
abandoned

(3) Where, within a reasonable period of time, a proponent fails to comply with the order of the Director made under subsection (2), the Director may declare the project abandoned and may have the Crown or an agent thereof enter onto or into the site to implement rehabilitative measures.

Notice of
declaration

(4) The Director shall not have the Crown or an agent thereof take the measures referred to in subsection (3) until the Director has given the proponent notice in the prescribed form and manner of the Director's declaration.

Declaration
that lease
void

(5) Where under subsection (3) the Director has declared a project abandoned and the proponent has possession of the site as a lessee, the Lieutenant Governor in Council, on the recommendation of the Minister, may declare the lease void, and subsections 94 (12), (13) and (14) apply with necessary modifications.

Notice to
proponent

(6) The Director shall not take the steps referred to in subsection (5) until the Director has given the proponent the prescribed notice required under subsection (4), including in that notice the Director's intention to recommend to the Minister the steps referred to in subsection (5).

Where
project
abandoned
when Part
comes into
force

161i.—(1) The Director may by written notice require the proponent of a project the Director considers abandoned on the day this Part comes into force to submit within a specified period of time a proposed closure plan to rehabilitate the site.

Changes to
closure plan

(2) Prior to the Director informing the proponent that a closure plan required under subsection (1) is acceptable, the Director may by written notice require changes to the closure plan.

Rehabili-
tation of site

(3) On receiving written notification from the Director that a closure plan required under subsection (1) is acceptable, the proponent shall complete the rehabilitation of the site in accordance with the closure plan.

Declaration
that mine
abandoned

(4) Where the proponent of a site fails to comply with the Director's requirements under subsection (1) or (2), the Director may declare the project abandoned and may have the Crown or an agent of the Crown enter onto or into the site to implement rehabilitative measures.

Notice of
declaration

(5) The Director shall not have the Crown or an agent thereof take the steps referred to in subsection (4) until the Director has given the proponent notice in the prescribed form and manner of the Director's declaration.

(6) Where under subsection (4) the Director has declared a project abandoned and the proponent has possession of the site as a lessee, the Lieutenant Governor in Council, on the recommendation of the Minister, may declare the lease void, and subsections 94 (12), (13) and (14) apply with necessary modifications.

Declaration
that lease
forfeited

(7) The Director shall not take the steps referred to in subsection (6) until the Director has given the proponent the prescribed notice required under subsection (5), including in that notice the Director's intention to recommend to the Minister the steps referred to in subsection (6).

Notice to
proponent

VOLUNTARY SURRENDER OR ABANDONMENT

161j.—(1) Before accepting the voluntary surrender of lands referred to in section 198, where the Director has reasonable grounds for believing that the proponent may have failed to rehabilitate the site in a manner consistent with a closure plan accepted by the Director, or where no closure plan exists, in accordance with the prescribed standards for rehabilitation, the Minister may refuse to accept the surrender of such lands, and, upon such refusal, the Director may order the proponent to comply with the requirements of the accepted closure plan or to rehabilitate the site in accordance with the prescribed standards.

Refusal of
voluntary
surrender

(2) Where the proponent subject to an order under subsection (1) is an owner, the Director may register the order against the land or lands comprising the site in the proper land registry office and may apply to a Justice of the High Court for an injunction preventing the sale of the land or lands comprising the site, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands.

Application
for injunction

(3) Where the proponent subject to an order under subsection (1) is a lessee, the Director may recommend to the Minister that the Minister not consent to the transfer of the lease.

Refusal of
consent to
transfer lease

(4) Where the proponent subject to a Director's order under subsection (1) is a lessee under a lease which expires during the period in which the Director's order is in force, the lessee is not by reason only of the expiry of the lease relieved of the lessee's duties under this section.

Where lease
expires

(5) Where the proponent subject to an order under subsection (1) is the holder of a licence of occupation, the Direc-

Refusal of
consent to
transfer of
licence

tor may recommend to the Minister that the Minister not consent to a transfer of the licence.

Where
mining claim
not to be
abandoned

(6) Notwithstanding section 83, where the proponent is a mining claim holder and where the Director has reasonable grounds for believing that the proponent may have failed to rehabilitate the site in a manner consistent with a closure plan accepted by the Director, or where no closure plan exists, in accordance with the prescribed standards for rehabilitation, the holder may not abandon the mining claim and the Director may order the proponent to comply with the requirement of the accepted closure plan, or to rehabilitate the site in accordance with the prescribed standards.

Realization
of security

(7) If a person subject to an order under subsection (1) or (6) fails to comply with the order, the Director may,

- (a) where a closure plan applies, proceed and realize on the financial assurance under the provisions of section 161e; or
- (b) where no closure plan is in place, have the Crown, or an agent thereof, carry out rehabilitation measures in accordance with the prescribed standards.

COST OF WORK COMPLETED

Where cost
debt due to
Crown

161k.—(1) Where under subsection 161h (3) or 161i (4) the Director has the Crown or an agent of the Crown carry out rehabilitation measures, the resulting cost to the Crown is a debt due to the Crown and,

- (a) forms a lien and a charge on the site in favour of the Crown, realizable by action for sale of any part or all of the land or lands subject to it, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands; and
- (b) is recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected.

Idem

(2) The cost to the Crown of carrying out the rehabilitative measures under clause 161j (7) (b) is a debt due to the Crown recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected.

Idem

(3) Where under subsection 161e (5) the Crown or an agent of the Crown carries out rehabilitation measures and the

financial assurance held by the Crown is insufficient to cover the total cost incurred by the Crown in completing the rehabilitation measures, the extra cost not covered by the financial assurance is a debt due to the Crown which,

- (a) forms a lien and a charge on the site in favour of the Crown realizable by action for sale of any part or all of the land or lands comprising the site subject to the lien, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands; and
- (b) is recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected.

(4) Notice of the debt described in subsections (1) and (3) may be registered as a charge in the proper land registry office and no transfer of or other dealing with the site shall take place until the debt is paid and the notice is cancelled.

Registration
as charge

HEARINGS AND APPEALS

161-1.—(1) Where the Director,

Appeal to
Commis-
sioner

- (a) requires a closure plan under clause 161d (4) (b) or subsection 161i (1);
- (b) requires changes to either an existing or proposed closure plan under subsection 161a (3), 161b (2), 161d (6), 161g (7) or 161i (2);
- (c) orders the performance of rehabilitation measures under subsection 161e (2);
- (d) orders the proponent to rehabilitate the site under subsection 161h (2); or
- (e) declares a project abandoned under subsection 161h (3) or 161i (4),

the proponent may appeal the Director's requirement, order or declaration to the Commissioner, if within fifteen days of receiving the notice of the Director requiring the changes or proposed closure plans referred to in clause (a) or (b), receiving a Director's order referred to in clause (c) or (d), or receiving a Director's declaration referred to in clause (e), the proponent serves the Director with the prescribed notice requiring a hearing before the Commissioner, and, within

thirty days of being served, the Director shall refer the matter to the Commissioner for the hearing.

Automatic stay unless removed

(2) On the service of a notice on the Director under subsection (1) requiring a hearing before the Commissioner, the requirement, order or decision of the Director is stayed until the disposition of the appeal by the Commissioner, unless upon application with notice by the Director, the Commissioner removes the stay where the matter relates to,

- (a) changes to either an existing or proposed closure plan referred to in clause (1) (b); or
- (b) an order requiring the performance of rehabilitation measures referred to in clause (1) (c) or (d).

Provision of additional financial assurance

(3) Notwithstanding subsection (2), where the proponent appeals to the Commissioner under subsection (1) from a Director's requirement for changes to an existing closure plan under subsection 161d (4) and one of the changes required is to increase the amount of financial assurance required for the closure plan, the Commissioner shall refuse to hear the appeal unless the proponent has provided to the Director along with the notice required under subsection (1) the extra amount of financial assurance required under the closure plan to be held by the Crown pending the outcome of the proponent's appeal.

Waiver

(4) The Commissioner upon application with notice by the proponent may waive the requirement under subsection (3) if the Commissioner considers it just to do so.

Power of Commissioner on appeal

(5) Upon hearing the appeal of the proponent, the Commissioner may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing.

Application

(6) Sections 135, 136, 137 and 139 to 152 of this Act apply to appeals under this section with necessary modifications.

Appeal to Divisional Court

(7) An appeal lies to the Divisional Court on a question of law from any decision of the Commissioner under subsection (5) in accordance with the Rules of Civil Procedure.

Appeal to Minister

(8) A party to a hearing before the Commissioner may, within thirty days after receipt of the Commissioner's decision or within thirty days after final disposition of an appeal, if any, under subsection (7), appeal in writing to the Minister on any matter other than a question of law and the Minister shall confirm, alter or revoke the decision of the Commissioner as to the matter in appeal as the Minister considers in the public interest.

(9) The person requiring the hearing, the Director and any other person specified by the Commissioner are parties to the hearing.

Parties

SERVICE

161m.—(1) Any notice required to be served under this Part or the regulations made in respect thereto is sufficiently served if delivered personally or sent by registered mail addressed to the person upon whom service is to be made at the last address of service appearing on the records of the Ministry.

Service of notice

(2) Service made by registered mail shall be deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made establishes the person did not, acting in good faith, and for a cause beyond that person's control, receive a notice until a later date.

When service deemed made

PART IX-A

BRINE WELLS

162.—(1) In this section,

Definitions

“brine well” means a hole or opening in the ground for use in brining;

“brining” means the extraction of salt in solution by any method;

“chief engineer” means a person designated by the Minister as chief engineer for the purposes of this section.

(2) No person shall drill or bore a brine well except under the authority of a permit in writing issued by the chief engineer upon application therefor in the prescribed form.

Permit to bore or drill a brine well

(3) A permit shall not be issued,

Permits not issued

(a) to authorize a person to drill or bore a brine well on property in which the person does not own, hold or lease, or is not otherwise entitled to, the mining rights; or

(b) where the proposed brine well is nearer the boundary of such property than 150 metres.

(4) The chief engineer may reduce or extend the distance referred to in clause (3) (b) where in his or her opinion it is

Location of brine well

advisable to do so and shall notify the applicant of any such reduction or extension within thirty days from the date upon which the application for the permit is filed.

Condition of
permit

(5) A permit is subject to the condition that the brine well in respect of which it is issued is bored or drilled in the location described in the permit.

Time for
issuance of
permit

(6) A permit shall be issued or refused within thirty days from the date on which the application therefor is filed, except that, where notice has been given by the chief engineer under subsection (4), the permit shall be issued upon the receipt by the chief engineer of the applicant's consent thereto.

Log of
drilling
operations

(7) Where a person drills or bores a brine well, he or she shall forward a log of the drilling or boring in the prescribed form in duplicate to the chief engineer within thirty days of the completion of the drilling or boring operations, and, upon the person's request in writing, the log shall be confidential for a period of six months.

Protection of
water
horizons

(8) A person boring or drilling a brine well shall take such reasonable measures as are necessary to control the infiltration of water from one horizon to any other horizon that may be penetrated during the drilling or boring operations.

Protection of
deposits

(9) All brine wells shall be cased and equipped so as to reasonably ensure against the uncontrolled flow of oil, natural gas, brine or water.

Standard of
casing and
equipment

(10) Casing and equipment shall be in good condition and of a thickness and strength adequate to withstand any fluid pressure to which they might normally be subjected.

Plugging of
abandoned
wells

(11) Where practicable, all brine wells shall be plugged by the person operating them, before being abandoned, in a manner that will,

(a) reasonably ensure that salt horizons and potential oil or natural gas producing horizons are protected; and

(b) retain water and brine in their original formations.

Report of
proposed
plugging

(12) Before commencing to plug a brine well, the person proposing to carry out the plugging operations shall report the particulars thereof to the chief engineer in the prescribed form.

(13) Where a person plugs a brine well, he or she shall forward a record of the plugging in the prescribed form in duplicate to the chief engineer within thirty days of the completion of the plugging operations.

Record of
plugging
operations

PART IX-B

STATISTICAL RETURNS

163.—(1) For the purposes of tabulation, every owner of a mine shall, on or before the 31st day of March in each year, send to the Minister on the forms provided a report of activities for the preceding year ending on the 31st day of December showing,

Annual
report

- (a) the nature of the work performed and the sums spent on mining and exploration;
- (b) the sums allocated for capital expenditures and repairs;
- (c) the current state of ore reserves;
- (d) the quantity and value of mineral production;
- (e) the number of employees; and
- (f) the revenues and expenses entailed in mining and exploration activities,

and the report shall be accompanied by such other information, plans and documents as the Minister requires, including, without limiting the scope of the requirement, information, plans and documents respecting,

- (g) inventory;
- (h) fuel and electricity consumed;
- (i) mining supplies and materials used;
- (j) non-mining supplies and materials used;
- (k) mining products, shipments and destinations;
- (l) non-mining products;
- (m) production details; and
- (n) wastes produced.

Monthly or
quarterly
report

(2) The Minister may require an owner to send monthly or quarterly reports within such times as the Minister specifies.

Bankruptcy,
etc.

(3) In the event of the bankruptcy or winding-up of an owner, the trustee or liquidator shall, at the request of the Minister, send the report to the Minister.

Pit or quarry
operations
1989, c. 23

(4) The Minister may require a licensee or permittee operating a pit or quarry under the *Aggregate Resources Act, 1989* to send information to the Minister in accordance with this section, and, where the Minister does so, subsections (1), (2) and (3) apply with necessary modifications.

78. Section 175 of the said Act is repealed.

79. Section 176 of the said Act is repealed and the following substituted therefor:

Penalty for
offence
against
Part IX

176.—(1) Every person who contravenes any provision of Part IX or the regulations made in respect thereto is guilty of an offence and on conviction is liable to a fine of not more than \$30,000 for each day on which the offence occurs or continues.

Failure to
comply with
order of
Director

(2) Every person who is subject to a Director's order under Part IX and who fails to take all reasonable steps to obey the conditions of the order is guilty of an offence and on conviction is liable to a fine of not more than \$30,000 for each day on which the offence occurs or continues.

Application
for
restraining
order

(3) Where any person fails to,

- (a) comply with section 161a or 161b before commencing or recommencing a project;
- (b) comply with an accepted closure plan as required under subsection 161d (1);
- (c) submit the report required under subsection 161d (3);
- (d) give the Director notice of a planned expansion or alteration as required by subsection 161d (5); or
- (e) give the notice required under subsection 161g (1) or submit a closure plan required under subsection 161g (4) or (6),

the Director may apply at any time to a Justice of the High Court for an order prohibiting advanced exploration, mining or mine production on the site.

(4) Every person who alters, destroys, removes or impairs any rehabilitation work made in accordance with Part IX or an accepted closure plan without the written consent of the Minister is guilty of an offence and on conviction is liable to a fine of not more than \$30,000.

Destruction, etc., of rehabilitation works

(5) Every director or officer of a corporation that engages in a project under Part IX has a duty to take all reasonable care to ensure that the corporation complies with the requirements of that Part.

Duty of directors and officers

(6) Every person who has a duty under subsection (5) and who fails to carry out that duty is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Offence

(7) A director or officer of a corporation is liable to conviction under subsection (6) whether or not the corporation has been prosecuted and convicted.

Liability of directors and officers

(8) The court that convicts a person of an offence under Part IX, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of monetary benefit acquired by, or that accrued to, the person as a result of the commission of the offence, notwithstanding the imposition of the maximum fine provided for that offence.

Increase in fine equal to monetary benefit

176a. Every owner of a mine and every licensee or permittee operating a pit or quarry under the *Aggregate Resources Act, 1989* who contravenes section 163, or who makes a report under that section that is, to the owner's, licensee's or operator's knowledge, false in any particular, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for each day on which the offence occurs or is continued.

Offence
1989, c. 23

80. Clause 177 (1) (a) of the said Act is repealed and the following substituted therefor:

(a) by a rehabilitation inspector.

81. Part XII of the said Act is repealed.

82. Section 190 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 48, section 2, is repealed and the following substituted therefor:

Regulations

190.—(1) The Lieutenant Governor in Council may make regulations generally,

1. governing the opening, construction, maintenance and use of roads to, through or over mining claims, mining locations or lands sold or leased as mining lands or recorded as mining claims or locations under this Act or a predecessor thereof, and for the opening, construction or maintenance and use of ditches, aqueducts or raceways through, over or upon such claims, locations or lands for the conveying and passage of water for mining purposes;
2. prescribing the form of any application, notice, report, log, record, dispute, certificate, permit, statement or other document required, permitted or provided for, by or under this Act;
3. prescribing the amount of any fee required to be paid to the Minister, the Ministry, the Commissioner or a recorder by or under this Act;
4. prescribing the manner of staking and the size and form of mining claims and the time and manner of affixing tags in respect thereto;
5. prescribing the annual rental for a licence of occupation;
6. prescribing the information to be shown on a sketch or plan accompanying an application to record a mining claim;
7. prescribing, for the purposes of subsection 62 (1), the conditions on which permission may be given to mine, mill and refine mineral substance from an unpatented mining claim;
8. prescribing the annual units of assessment work to be performed by the holder of a mining claim;
9. prescribing, for the purposes of subsection 76 (2), locations, other than the office of the recorder, in which may be filed assessment work reports and prescribing the date reports in respect of specified types of assessment work shall be filed;
10. prescribing the types of work eligible for assessment work credits, the method of calculating and approv-

ing credits for work performed and the manner of distribution of credits to mining claims;

11. prescribing the manner in which prospecting and regional surveys performed before staking are eligible for assessment work credits;
12. prescribing the manner in which exploration work performed on patented mining claims may be allocated to contiguous unpatented mining claims;
13. prescribing the conditions on which an extension of time for the performing of and filing a report on assessment work may be allowed by a recorder;
14. prescribing the annual rental for the first year for a lease of a mining claim, the rate for each subsequent year and the annual rental for a renewal lease;
15. prescribing the rental rate for the mining rights only in respect of a mining claim;
16. prescribing the additional assessment work to be performed in respect of any excess area of a mining claim or in respect of excess average area of mining claims within a perimeter survey;
17. prescribing the annual rental of a lease referred to in section 95;
18. prescribing the annual rental of a lease or renewal lease of surface rights referred to in section 97;
19. prescribing the methods and procedures to be followed in the surveying of mining claims;
20. prescribing the rate of interest to be imposed in the cases mentioned in subsections 196 (2) and 211 (2);
21. prescribing, for the purposes of section 202, the amount of tax to be paid for each hectare;
22. prescribing classes of instruments and documents that may be filed through transmission by electronic means in such manner as is prescribed;
23. defining any word or expression for the purposes of this Act and the regulations that has not already been expressly defined in this Act;

24. prescribing anything that by this Act is to be or may be prescribed.

Idem

(2) The Lieutenant Governor in Council may make regulations relating to Part IX,

1. prescribing the manner of preparing closure plans, their form and content, and the information, particulars, maps and plans to be included therein;
2. prescribing standards for rehabilitation;
3. prescribing standards for the protective measures to be taken in respect of the closure of a mine;
4. prescribing the form and manner and time of giving public notice;
5. prescribing the form and manner in which notice is to be given to the Director and to the proponent;
6. prescribing the manner of preparing the annual report to the Director required under subsection 161d (3);
7. prescribing the form of notice to be given under subsection 161d (5);
8. prescribing, for the purposes of subsection 161f (5), the form of a warrant to enter and inspect and, for the purposes of subsection 161f (6), the form of a warrant to enter and search;
9. prescribing, for the purposes of subsection 161g (1), the information to be contained in the notice to be given to the Director relating to a producing mine or to a mine from which production is temporarily suspended;
10. prescribing quantities of material extracted and other types of work that are to be classified as advanced exploration work;
11. prescribing time periods within which duties under Part IX shall be complied with;
12. prescribing anything that by Part IX is to be or may be prescribed.

(3) Notwithstanding anything in this Act, in special circumstances the Minister may, subject to the approval of the Lieutenant Governor in Council, issue a licence of occupation, lease or patent of any mining lands or mining rights on such terms and conditions as the Minister considers appropriate.

Minister may
issue licence,
lease or
patent

83. Section 192 of the said Act is repealed.

84.—(1) Subsection 193 (1) of the said Act is amended by striking out “Notwithstanding section 192” in the first line.

(2) Subsection 193 (2) of the said Act is repealed.

85. Section 194 of the said Act is amended by adding thereto the following subsections:

(2) The land registrar of the land titles or registry division in which any lands or rights mentioned in a court order made under subsection (1) are situate shall, upon receipt of the order, register it and the order is absolute and conclusive proof of the vesting in the Crown of the lands or rights affected by the order and the vesting in the Crown is not open to attack in any court by reason of the omission of any act or thing leading up to the order repealing or avoiding the patent or lease.

Registration
of order

(3) Upon registration of the court order in the land registry office, the *Registry Act* or the *Land Titles Act*, as the case may be, ceases to apply to the lands or rights affected by the order, and the land registrar shall note that fact in the register in red ink.

Non-
application
of
R.S.O. 1980,
cc. 445, 230

(4) The lands and mining rights vested in the Crown under this section are not open for prospecting, staking out or lease under this Act until a date fixed by the Deputy Minister, two weeks notice of which shall be published in *The Ontario Gazette*.

Opening
lands for
prospecting,
etc.

86. Section 195 of the said Act is repealed and the following substituted therefor:

195. Where a freehold or leasehold in mining lands or mining rights reverts, other than by transfer to the Crown, the land or rights may be dealt with as unpatented Crown land.

Reversion to
Crown

87.—(1) Subsection 196 (2) of the said Act is amended by striking out “rate of 6 per cent” in the eighteenth and nineteenth lines and inserting in lieu thereof “prescribed percentage rate”.

(2) Subsection 196 (8) of the said Act is repealed and the following substituted therefor:

Fee

(8) An application under subsection (2) shall be accompanied by the prescribed fee.

88. Subsection 197 (5) of the said Act is amended by striking out "purchase or" in the fifth line.

89. Subsection 198 (1) of the said Act is repealed and the following substituted therefor:

Voluntary
surrender of
mining lands

(1) The owner, lessee or licensee of any mining lands or mining rights granted under this Act or any other Act may surrender such lands or mining rights to the Crown only upon such terms as are acceptable to the Minister, and thereupon the Minister may cause a notice of determination to be filed in the proper land registry office.

90. Section 199 of the said Act is repealed and the following substituted therefor:

Lands
forfeited,
etc., to
Crown
R.S.O. 1980,
c. 95
1982, c. 4

199.—(1) Where mining lands or mining rights,

- (a) are forfeited to the Crown under the *Corporations Act* or the *Business Corporations Act, 1982*, or any predecessor thereof or are forfeited to the Crown for any other cause; or
- (b) have become the property of the Crown by reason of the person last seised thereof or entitled thereto having died intestate and without lawful heirs,

the Minister may cause to be registered in the proper land registry office a notice stating that forfeiture has been effected as mentioned in clause (a) or that the lands or mining rights have become the property of the Crown as mentioned in clause (b), as the case may be, and that by reason thereof the lands or mining rights and every interest therein are forfeited to and vested in, or have become the property of, the Crown, absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto, whether existing, arising or accruing before or after such forfeiture or becoming the property of the Crown, and, subject to subsection (2), such lands shall be dealt with under this Act.

Opening
forfeited,
etc., lands
for
prospecting,
etc.

(2) Mining lands or mining rights so forfeited or that have become the property of the Crown are not open for prospecting, staking out, sale or lease under this Act until a date fixed

by the Deputy Minister, two weeks notice of which shall be published in *The Ontario Gazette*.

91. Section 200 of the said Act and the preceding heading are repealed and the following substituted therefor:

ANNULMENT OF FORFEITURE OR TERMINATION OF LEASE

200.—(1) The Lieutenant Governor in Council, upon the recommendation of the Minister, may by order revoke, cancel or annul the forfeiture of any lands or mining rights under this Act or revoke, cancel or annul the termination of any lease of mining lands under this Act, and the Deputy Minister shall cause the order to be registered in the proper land registry office and thereupon the lands or mining rights revert in the owner or lessee of the lands or mining rights at the time of forfeiture or termination, his or her heirs, successors or assigns, subject to any lien, mortgage, or charge entered or registered prior to the forfeiture or termination and still outstanding.

Annulment
of forfeiture,
etc.

(2) Where application is made for an order under subsection (1), the Minister may direct the lands or mining rights described in the application to be withdrawn from prospecting, staking out, sale or lease until the disposition of the application.

Withdrawal
of lands from
prospecting,
etc.

(3) The Minister may direct an application for an order under subsection (1) to be accompanied by the prescribed fee.

Fee

92. The heading preceding section 201 of the said Act is struck out and the following substituted therefor:

MINING LAND TAX

93. Section 201 of the said Act is repealed and the following substituted therefor:

201. In this section,

Definitions

“municipality” means a city, town, village, township or improvement district;

“tax” means a tax under this Part.

94. Section 202 of the said Act is repealed and the following substituted therefor:

Amount of
tax

202. There shall be paid to the Crown in each year a tax in the prescribed amount for each hectare on any lands or mining rights to which this Part applies.

95. Section 203 of the said Act is amended by striking out “acreage” in the first line.

96.—(1) Subsection 204 (1) of the said Act is amended by striking out “acreage” in the twenty-third line.

(2) Subsection 204 (2) of the said Act is amended by striking out “acreage” in the first line.

97. Clause 205 (1) (a) of the said Act is repealed and the following substituted therefor:

(a) land has been subdivided,

(i) by a registered plan of subdivision, or

(ii) by a reference plan into parts for city, town, village or summer resort purposes,

and there is no severance of the surface and mining rights.

98. Section 207 of the said Act is amended by striking out “acreage” in the third line.

99. Section 208 of the said Act is amended by striking out “acreage” in the fourth line.

100. Section 209 of the said Act is amended by striking out “acreage” in the second line.

101. Subsection 210 (1) of the said Act is amended by striking out “acreage” in the fourth line and in the eighth line.

102.—(1) Subsection 211 (1) of the said Act is amended by striking out “acreage” in the first line.

(2) Subsection 211 (2) of the said Act is repealed and the following substituted therefor:

Fee

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

103.—(1) Subsection 212 (1) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 48, section 3, is further amended by striking out “acreage” in the fourth line

and by striking out “certified mail” in the sixth line and inserting in lieu thereof “mail or delivered by courier service”.

(2) Subsection 212 (2) of the said Act is amended by striking out “acreage” in the sixth line.

(3) Subsection 212 (3) of the said Act is amended by striking out “acreage” in the first line.

104. Section 214 of the said Act is repealed.

105.—(1) Subsection 215 (1) of the said Act is amended by striking out “acreage” in the first line.

(2) Subsection 215 (2) of the said Act is amended by striking out “acreage” in the second line.

106. Section 217 of the said Act is amended by striking out “acreage” in the second line.

107. The Schedule to the said Act is repealed.

108.—(1) Every prospector’s licence issued or renewed under the *Mining Act*, that is in good standing on the day this Act comes into force, expires at midnight on the 31st day of March, 1990, and thereafter, in the case of a licence held by a natural person, may be renewed under section 22 of the *Mining Act*, as amended by section 12 of this Act.

Prospector’s
licence
R.S.O. 1980,
c. 268

(2) The expiry provision in subsection (1) does not apply to a prospector’s licence that was issued or renewed as a lifetime licence.

Idem

(3) Where, before the 24th day of October, 1989,

Dispute or
court
proceeding

(a) a dispute has been filed under section 56 of the *Mining Act*; or

(b) a proceeding has been commenced in the Supreme Court to declare forfeited or void or to cancel or annul any Crown patent issued for mining lands, mining claims or mining rights,

the provisions of the *Mining Act*, as they existed before the coming into force of this Act, continue to apply to the dispute or proceeding until finally disposed of.

(4) Subsections 56 (7) and (8) of the *Mining Act*, as enacted by section 34 of this Act, apply to any re-staking by or on behalf of a transferee that has been commenced before, on or

Re-staking

after the 24th day of October, 1989, unless, before that day, the matter in dispute has been finally disposed of under the *Mining Act*.

Freehold
patent

(5) Section 96 of the *Mining Act*, as it read before its re-enactment by section 61 of this Act, continues in force and applies in respect of any application for a patent made under that section before the 24th day of October, 1989.

Commence-
ment

109. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

110. The short title of this Act is the *Mining Amendment Act, 1989*.

Bill 71

An Act to amend the Mining Act

The Hon. H. O'Neil
Minister of Mines



1st Reading October 24th, 1989
2nd Reading November 27th, 1989
3rd Reading
Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The following is a summary of the proposed changes to the Act:

1. Prospector's Licences

It will no longer be necessary to hold a prospector's licence to hold or acquire an interest in a mining claim. Licences will be valid for a five-year period, renewable on the prospector's birth date. At present, licences are valid for one year and expire on the 31st day of March. In future only individuals will be eligible for a licence. Claim tags will no longer expire with the prospector's licence and may be used by any licensee. The provision allowing for free assay coupons will be repealed. [Sections 1 (6), 9 to 15, 18, 19, 32 (2), 33, 34 (1), 37, 39, 41, 44 (2), 50, 51, 52 (2), 52 (5), 56 (1), 70 (1) and 108 (1)].

2. Staking Practices

Provisions setting out the size, form and manner that a mining claim shall be staked will be put in regulations. The priority of staking will be based on the completion time and will determine priority of recording where two or more licensees make application to record the staking of all or part of the same lands. [Sections 24, 25, 26 (1), 28 and 30 to 33].

3. Security of Tenure

Disputes challenging the validity of a mining claim will not be allowed after one year of the recording of the mining claim or after the first prescribed unit of assessment work has been performed and filed, and, where necessary, approved; this provision comes into force on the day the Act receives Royal Assent. A transferee who has acquired a mining claim in good faith will be allowed to re-stake the claim at any time without any loss of assessment work. All provisions in the *Mining Act* dealing with Certificates of Record will be repealed. The definition of "substantial compliance" will be broadened. [Sections 29, 34, 35, 37, 51, 55, 56 (2), 59 (1), 70 (2), 70 (3), 70 (4), 72 (2), 108 (3), 108 (4) and 111].

4. Assessment Work

The holder of a mining claim will be required to perform annual units of assessment work, measured in terms of dollars spent, subject to details defined in regulations. Certain types of assessment work (prospecting and regional surveys) performed prior to the staking of a mining claim, and assessment work performed on contiguous leased or patented lands will be eligible for credit. Authority to grant extensions of time to perform assessment work will be moved from the Mining and Lands Commissioner to the mining recorders. Relief from forfeiture in respect of an unpatented mining claim may be granted only by the Lieutenant Governor in Council on the recommendation of the Minister, except in the circumstance of administrative error on the part of the Crown, when such relief may be granted by a recorder; for an interim period of eight months after the relevant amendments to the Act come into force however, the Mining and Lands Commissioner may, on application made within that period, continue to grant relief from forfeiture on such conditions as the Commissioner considers just. [Sections 1 (1), 36, 46, 47, 52 (3), 53, 54, 91 and 109].

5. Surface Rights Compensation

A claim holder will be required to give notice to a surface rights holder prior to first performing ground assessment work. A claim holder, lessee, or owner of mining rights will be required to compensate the surface rights holder for damages sustained to the surface rights. Any person who damages mineral exploration workings will also have an obligation to compensate the claim holder. [Sections 57 and 58].

6. Mining Leases and Patents

Mining leases will be issued at the claim holder's option at any time after the first prescribed unit of assessment work has been performed and filed (and where necessary, approved). Leases will only be renewed where the production of minerals has occurred continuously for more than one year in the previous term of the lease or where the lessee has demonstrated a reasonable effort to bring the property into production except that leases issued under predecessor Acts may continue to be renewed in perpetuity for periods of ten years. Provisions are included to provide for the phasing in of the increased rents established by the Bill. Where mining lands or mining rights are surrendered, the owner or lessee may elect to retain an interest in the lands in the form of unpatented mining claims. The provision allowing for the issuance of freehold patents will be repealed. All references to "Acreage Tax" in Part XIV of the Act will be changed to "Mining Land Tax" and the rates will be prescribed in regulations. [Sections 52 (4), 59 to 62, 89, 92, 93, 108 (5) and 110].

7. Discretionary Grants of Mineral Tenure

The various provisions in the *Mining Act* respecting discretionary grants of mineral tenure will be consolidated into subsection 190 (3) of the Act. [Sections 22, 68, 82 and 91].

8. Operation of Mines

Part IX of the Act is re-enacted. These provisions will expand the legislative framework to cover all stages of mining activity including advanced exploration, development and closure. Complementary amendments will be made to other parts of the Act. [Sections 1 (7), 1 (8), 77 and 79].

The following is a summary of the more significant features of the new Part IX as set out in section 77 of the Bill:

- (a) There will be new requirements for notice to the public and government of advanced exploration and mine development activity. (Proposed sections 161a and 161b of the Act).
- (b) Closure plans with related financial assurances will be required before development or production commences to ensure that adequate mine rehabilitation is completed. (Proposed sections 161d and 161e of the Act).
- (c) Directors of Mine Rehabilitation and Rehabilitation Inspectors will be appointed to regulate mine rehabilitation. Decisions of the Director will be appealable to the Mining and Lands Commissioner. (Proposed sections 161 (2), 161f and 161-l of the Act).
- (d) Mineral Development Officers will be appointed to co-ordinate and expedite communication between the mining industry, the public and affected ministries and agencies of the Government of Ontario. (Proposed section 161 (1) of the Act).
- (e) Owners of existing mines will be required to give notice to the government and the Minister will determine the period of time within which a closure plan (which includes a financial assurance) is to be submitted. (Proposed section 161g of the Act).
- (f) Owners who abandon a mine before or after the day Part IX comes into force will still have a duty to give notice to the government and will be required to rehabilitate the site. (Proposed sections 161h and 161i of the Act).
- (g) Owners of mining lands will be required to rehabilitate before the surrender of those lands to the Crown. (Proposed section 161j of the Act).

- (h) The cost of rehabilitation measures carried out by the Crown on behalf of a mine owner will be a debt due to the Crown. (Proposed section 161k of the Act).
- (i) The penalties for contravening the Part IX provisions will include fines and court injunctions to prevent further activity on a mining site. (Proposed section 176 of the Act as set out in section 79 of the Bill).

9. Surface Mining of Non-Metallic Minerals

All surface mining of non-metallic minerals on private land (e.g. mining leases or patents) outside of designated areas under the *Aggregate Resources Act, 1989* will be regulated under the new Part IX. [Proposed sections 1, 118 and 160 (2) (c)].

10. The Mining and Lands Commissioner

Certain procedural matters with respect to the Mining and Lands Commissioner will be amended, for example a fee will be required when applying for an appointment for hearing to cover the recording of any orders in the matter and the Commissioner may order any party to be examined before an official examiner or to file a pre-hearing statement setting out the evidence that will be relied upon. Section 161-l of the re-enacted Part IX of the Act will provide for appeals from the Director of Mine Rehabilitation to the Commissioner. [Sections 72 (1) and 73 to 77].

11. Regulations

The regulation-making powers set out in the Act will be re-enacted. There will be increased use of regulations for such matters as the structure of fees, approved staking methods, assessment work requirements, and the operation of mines. [Section 82].

12. Miscellaneous

Inconsistencies and outdated references will be corrected. [Sections 1 (2) to 1 (10), 2 to 8, 16, 17, 20, 21, 23, 27, 38, 40, 42, 43, 44 (1), 44 (3), 45, 48, 49, 59 (5), 61, 63 to 67, 71, 77 (Parts IX-A and IX-B), 78, 80, 81 and 83 to 107].

Bill 71**1989****An Act to amend the Mining Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraph 1 of section 1 of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

1. “anniversary date”, when referring to a mining claim, means the date that occurs at annual intervals after the recording of a mining claim, or such other date as results from the application of subsection 79 (2).

(2) Paragraphs 4 and 5 of the said section 1 are repealed and the following substituted therefor:

4. “Crown land” does not include,
 - i. land, the surface rights, mining rights or the mining and surface rights of which are under lease or licence of occupation from the Crown,
 - ii. land in the actual use or occupation of the Crown, the Crown in right of Canada, or of a department of the Government of Canada or a ministry of the Government of Ontario,
 - iii. land the use of which is withdrawn or set apart or appropriated for a public purpose, or
 - iv. land held by a ministry of the Government of Ontario;
5. “Deputy Minister” means the Deputy Minister of Mines.

(3) Paragraph 6 of the said section 1 is repealed.

(4) Paragraph 7 of the said section 1 is repealed and the following substituted therefor:

7. “holder”, when referring to the holder of an unpatented mining claim, a boring permit or a licence of occupation issued under this Act, means the holder of record.

(5) Paragraph 9 of the said section 1 is repealed and the following substituted therefor:

9. “inspector” includes a geologist on the staff of the Ministry and any other officer or agent designated by the Minister to carry out an inspection or investigation of the mining industry.

(6) Paragraph 11 of the said section 1 is repealed and the following substituted therefor:

11. “licensee” means a person holding a prospector’s licence issued under this Act or a renewal thereof.

(7) Paragraphs 14, 15 and 16 of the said section 1 are repealed and the following substituted therefor:

14. “mine”, when used as a noun, means any opening or excavation in, or working of the ground, for the purpose of winning any mineral or mineral bearing substance, and all ways, works, machinery, plant, buildings and premises below or above the ground belonging to or used in connection with such activity, and any roasting or smelting furnace, concentrator, mill, work or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any of such substances and includes mines that have been temporarily suspended, rendered inactive, closed out or abandoned as well as lands where tailings, or wasterock, or both, or any other prescribed substances from any opening or excavation or working of the ground have been deposited;
15. “mine”, when used as a verb, means the performance of any work in or about a mine, as defined in paragraph 14;
16. “minerals” means all naturally occurring metallic and non-metallic minerals, including natural gas, petroleum, coal, salt, quarry and pit material, gold,

silver and all rare and precious metals, but does not include sand, gravel and peat;

- 16a. “mining claim” means a parcel of land, including land under water, that has been staked and recorded in accordance with this Act and the regulations.

(8) Paragraphs 18, 19, 20, 21 and 22 of the said section 1 are repealed and the following substituted therefor:

18. “mining rights” means the right to minerals on, in or under any land;
19. “Minister” means the Minister of Mines, except that in Parts IV and IX-A “Minister” means the Minister of Natural Resources;
20. “Ministry” means the Ministry of the Minister;
21. “owner”, when used in Parts IX, IX-B and XI, includes every person, being the immediate proprietor, lessee or occupier of a mine, or a part thereof, or of any land located, patented or leased as mining land, and includes an agent, or a person designated by the owner or agent as responsible for the control, management and direction of a mine, or a part thereof, but does not include a person receiving merely a royalty from a mine, or mining lands, or the owner of the surface rights only;
22. “patent” means a grant from the Crown in fee simple or for a less estate made under the Great Seal, and includes leasehold patents and freehold patents, but in sections 4, 28, 97, 100 to 108, 190, 194, 197 and 204, the meaning is limited to freehold patents.

(9) Paragraph 23 of the said section 1 is repealed and the following substituted therefor:

23. “prescribed” means prescribed by the regulations;
- 23a. “prospecting” means the investigating of, or searching for, minerals.

(10) Paragraphs 26 and 29 of the said section 1 are repealed.

2. The said Act is amended by adding thereto the following section:

Purpose of
Act

1a. The purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources and to minimize adverse effects on the environment through rehabilitation of mining lands in Ontario.

3. Section 3 of the said Act is repealed.

4. Section 4 of the said Act is amended by adding thereto the following subsections:

Immunity for
acts done in
good faith

(3) No action or other proceeding for damages shall be instituted against the Minister, the Deputy Minister or any officer or employee of the Ministry or any one acting under the authority of the Minister or Deputy Minister for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

Crown
liability
R.S.O. 1980,
c. 393

(4) Subsection (3) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (3) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (3) had not been enacted.

Delegation of
Minister's
powers, etc.

(5) Where under this Act a power or duty is granted to or vested in the Minister, the Minister may in writing delegate that power or duty to the Deputy Minister or to any officer or employee of the Ministry, subject to such limitations, conditions and requirements as the Minister sets out in the delegation.

Employees
authorized to
take
affidavits

(6) The Minister may empower such employees of the Ministry as the Minister designates to administer oaths and take and receive affidavits, declarations and affirmations authorized by law, for the purposes of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of such oath, affidavit, declaration or affidavit, all the powers of a commissioner for taking affidavits under the *Commissioners for taking Affidavits Act*.

R.S.O. 1980,
c. 75

5.—(1) Subsection 6 (1) of the said Act is repealed and the following substituted therefor:

Mining
recorder

(1) The Minister may appoint an employee of the Ministry as mining recorder for each mining division.

(2) Subsection 6 (3) of the said Act is repealed.

6. Section 7 of the said Act is amended by inserting after “such” in the first line “record”.

7.—(1) Section 9 of the said Act is amended by striking out “any of such books” in the first and second lines and inserting in lieu thereof “a record book”.

(2) The said section 9 is further amended by adding thereto the following subsections:

(2) Where a copy of or extract from an entry in a record book or any document filed in the recorder’s office is recorded electronically or on a magnetic medium, any writing that,

Computer
printout,
etc.,
admissible
evidence

- (a) represents the entry in the record book or the filed document;
- (b) is generated or produced from the electronic record or magnetic medium; and
- (c) is in a readily understandable form,

is admissible in evidence to the same extent as the original book or filed document.

(3) Where a record in a recorder’s office is recorded electronically or on a magnetic medium and there is no original written record that corresponds to the record, any writing that,

Idem

- (a) represents the record;
- (b) is generated by or produced from the electronic record or magnetic medium; and
- (c) is in a readily understandable form,

is admissible in evidence to the same extent as the record would be if it were an original written record.

8.—(1) Subsection 12 (1) of the said Act is amended by striking out “and any such purchase or interest is void” in the fourth and fifth lines.

(2) Subsection 12 (2) of the said Act is repealed and the following substituted therefor:

(2) Where the Deputy Minister is satisfied that an officer has in good faith acquired an interest referred to in subsection

Waiver by
Deputy
Minister

(1) for other than mining purposes, the Deputy Minister may in writing waive the application of subsection (1) to the officer.

Penalty

(3) Any officer contravening subsection (1) forfeits his or her office.

9. Subsection 18 (1) of the said Act is repealed and the following substituted therefor:

Licence
required

(1) No person shall prospect on Crown lands or stake out, record or apply to record the staking of a mining claim unless the person is the holder of a prospector's licence issued under this Act.

10. Section 19 of the said Act is repealed and the following substituted therefor:

Who may
receive
licence

19.—(1) Any natural person who is of the age of eighteen years or over is entitled to obtain a prospector's licence upon application therefor made in the prescribed form and upon payment of the prescribed fee.

Date and
term of
licence

(2) A licence shall be dated on the day of its issue and expires at midnight on the day of the fifth anniversary of the licensee's birth date that follows the issue of the licence.

Not valid
unless signed

(3) A licence is not valid unless it is signed by the holder thereof in the space provided on the licence.

Licence not
transferrable

(4) A licence is not transferrable.

Who may
issue

(5) A licence may be issued by any recorder.

Service

(6) Any notice or document relating to a licensee is sufficiently served upon the licensee if delivered or sent by prepaid first class mail to the address shown on the application for the prospector's licence or to the address given under subsection (8), if applicable.

Idem

(7) Where service is made by prepaid first class mail under subsection (6) it shall be deemed to have been made on the fifth day after the day of mailing.

Notice of
change of
address

(8) A licensee shall notify, in the prescribed form, the recorder of any change in the address of the licensee.

11. Section 21 of the said Act is repealed.

12.—(1) Subsection 22 (1) of the said Act is repealed and the following substituted therefor:

(1) A licensee is entitled to a renewal of his or her licence upon making application therefor in the prescribed form and paying the prescribed fee within sixty days of its expiration.

Renewal of licence

(1a) Notice of the expiration of a licence shall be given by the recorder to the holder of the licence not later than sixty days before the expiry date.

Notice of expiration of licence

(2) Subsections 22 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) A licence may be renewed by any recorder.

Who may renew

(3) The renewal shall bear date on the day following the expiration of the licence or renewal of licence of which it is the renewal and shall take effect immediately upon the expiration of that licence, or renewal thereof, as the case may be.

Date and term of renewal

(3) Subsection 22 (4) of the said Act is amended by adding at the end thereof “and shall expire at 12 o’clock midnight on the day that is the fifth anniversary of the licensee’s birth date following the effective date of the renewal”.

(4) Subsection 22 (5) of the said Act is repealed and the following substituted therefor:

(5) The Minister shall renew without fee the licence of a person who has held a licence continuously for twenty-five years, and the licence shall remain in good standing during the lifetime of the licensee.

Lifetime renewal by Minister

(6) The Minister may, at his or her discretion, renew the licence of a person without fee and order that the licence remain in good standing during the lifetime of the licensee.

Idem

13. Subsection 24 (1) of the said Act is repealed and the following substituted therefor:

(1) No person shall apply for or hold more than one prospector’s licence.

Not more than one licence

14.—(1) Subsection 27 (5) of the said Act is repealed and the following substituted therefor:

(5) While a licence is suspended under subsection (3), the licensee may renew the licence but the licensee may not stake out or apply to record a mining claim.

Rights of licensee under suspension

Where holder
of mining
claim
contravenes
Act

(5a) Where the recorder finds, after a hearing, that a holder of a mining claim has contravened any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the recorder, order that such holder may not acquire an unpatented mining claim or interest therein through transfer or obtain an extension of time in which to perform work or to apply for lease on any unpatented mining claim recorded in the name of the holder.

Cancellation
of mining
claims

(5b) Where the Commissioner finds, after a hearing, that a holder of a mining claim has been guilty of a wilful contravention of any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the Commissioner, declare any mining claims of the holder to be cancelled and thereupon all rights of the holder in or to mining claim lands cease.

Order
pending
hearing

(5c) Pending the holding of a hearing on any matter under this section, the Commissioner or the recorder, as the case may be, before whom the hearing will be held, may order that any mining claim of the licensee or holder whose conduct is in question shall not, before the conclusion of the hearing and final disposition of the matter, be transferred to any other person.

Prohibition
against
staking out
claims, etc.

(5d) Where mining claims are cancelled under subsection (5b), the former holder of the mining claims may not stake out or apply for a mining claim or acquire an unpatented mining claim or interest therein through transfer for such period of time as the Minister determines, and the Minister shall notify the former holder of the period of time so determined.

(2) Subsection 27 (6) of the said Act is repealed and the following substituted therefor:

Appeal

(6) A finding by the Commissioner that a licensee or holder of a mining claim has wilfully contravened this Act or the regulations or by a recorder that a licensee or holder of a mining claim has contravened this Act or the regulations, as the case may be, may be appealed in like manner as any decision of the Commissioner or recorder, respectively, and the Minister shall give effect to the decision on the appeal.

15. Section 29 of the said Act is amended by striking out “licensee” in the fourth line and inserting in lieu thereof “person”.

16.—(1) Clause 30 (b) of the said Act is repealed and the following substituted therefor:

- (b) upon any land laid out on a registered plan of subdivision.

(2) Clause 30 (d) of the said Act is repealed.

17.—(1) Clause 31 (b) of the said Act is repealed and the following substituted therefor:

- (b) for which an application brought in good faith is pending in the Ministry of Natural Resources under the *Public Lands Act* or otherwise, and the applicant may acquire the minerals; or

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(2) Clause 31 (c) of the said Act is amended by inserting after “Ministry” in the third line “of Natural Resources”.

(3) Clause 31 (d) of the said Act is amended by striking out “and Communications” in the second line.

18. Subsection 33 (1) of the said Act is amended by striking out “or company” in the second and third lines.

19. Section 34 of the said Act is amended by striking out “licensee” in the fifth line and inserting in lieu thereof “holder of the mining claim”.

20. Section 35 of the said Act is amended by striking out “and Communications” in the third line.

21.—(1) Subsection 36 (1) of the said Act is amended by striking out “or an officer appointed under this Act and designated by the Minister” in the first and second lines.

(2) Subsection 36 (2) of the said Act is repealed and the following substituted therefor:

(2) Where the Minister makes an order under subsection (1), the Minister shall, within twenty-four hours of the date of the order, mail a copy of the order to the recorder.

Copy of
order sent to
recorder

(3) Subsection 36 (4) of the said Act is repealed and the following substituted therefor:

(4) Lands, mining rights or surface rights withdrawn under this section, until re-opened by the Minister, shall remain withdrawn and shall not be prospected or staked out.

Lands
withdrawn
not to be
prospectied,
etc.

22. Section 38 of the said Act is repealed.

23. Section 39 of the said Act is repealed and the following substituted therefor:

Permit under
R.S.O. 1980,
cc. 173, 413

39. Before beginning or carrying on any prescribed assessment work on a mining claim, the holder thereof, in addition to any other requirement, shall obtain a written permit entitling the holder to do so as provided in the *Forest Fires Prevention Act* or the *Public Lands Act*.

24. Section 40 of the said Act is repealed and the following substituted therefor:

Manner of
staking
mining claim

40. A mining claim shall be staked in such size, form and manner as is prescribed and may be staked on any day.

25. Section 42 of the said Act is repealed.

26.—(1) Subsections 43 (1), (2) and (3) of the said Act are repealed.

(2) Subsection 43 (5) of the said Act is amended by striking out “and Communications” in the third line.

27.—(1) Subsection 44 (1) of the said Act is repealed and the following substituted therefor:

Rates for
licences of
occupation

(1) Notwithstanding the provisions of a licence of occupation, there shall be paid, in advance, the prescribed annual rental for the licence of occupation.

(2) Subsection 44 (6) of the said Act is repealed and the following substituted therefor:

Lease may
be issued
under s. 94

(6) The holder of a licence of occupation, upon application in writing therefor and upon the surrender of the licence of occupation, may be issued a lease under section 94 and the rental for each year of the term thereof shall be that prescribed for the purposes of section 94 for years subsequent to the first year of a term.

28. Sections 45, 46, 47 and 48 of the said Act are repealed.

29. Section 50 of the said Act is amended by adding thereto the following subsection:

Deemed
substantial
compliance

(2) The staking out of a mining claim shall be deemed to be in substantial compliance with the requirements of this Act and the regulations even if there is a failure to comply with a number of specific staking requirements if,

- (a) the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity; and
- (b) it is apparent that an attempt has been made in good faith by the licensee to comply with the requirements of this Act and the regulations.

30. Section 51 of the said Act is repealed and the following substituted therefor:

51.—(1) A licensee who has staked out a mining claim shall make an application in the prescribed form to the recorder accompanied by the prescribed fee and a sketch or plan showing the prescribed information to record the claim not later than thirty-one days after the day on which staking was completed.

Application
to record
mining claim

(2) Priority of completion of staking shall prevail where two or more licensees make application to record the staking of all or a part of the same lands.

Priority of
completion
prevails

(3) Where one of the applications made by two or more licensees to record the staking of a mining claim is entitled to priority under subsection (2), the recorder shall cancel the other application or applications and shall by registered letter mailed not later than the following day notify the other licensee or licensees of the recorder's action and the reason therefor.

Notice to
other licensee
or licensees

31. Section 52 of the said Act is repealed.

32.—(1) Subsection 54 (1) of the said Act is amended by striking out “unless a prior application is already recorded and subsisting for the same, or for any substantial part of the same lands or mining rights” in the fourth, fifth and sixth lines.

(2) Subsection 54 (2) of the said Act is amended by inserting after “claim” in the fourth line “that has priority under subsection 51 (2)” and by striking out “licensee” in the twelfth line and inserting in lieu thereof “person”.

(3) Subsections 54 (5), (6), (7) and (8) of the said Act are repealed.

(4) Subsection 54 (9) of the said Act is repealed and the following substituted therefor:

(9) There shall be added to each claim number the prefix allotted to the mining division in which the claim is situate.

Division
prefix added

33. Section 55 of the said Act is repealed and the following substituted therefor:

Metal tags

55.—(1) Metal tags and duplicate tags shall be provided by the Ministry on payment of the prescribed fee and may be used by any licensee in staking out claims in the prescribed manner and within the prescribed time.

Transfer of tags

(2) Metal tags and duplicate tags do not expire but may not be re-used.



34.—(1) Subsection 56 (1) of the said Act is amended by inserting after “by” in the first line “a detailed statement of claim and an” and by striking out “licensee” in the third line and in the fifth line and inserting in lieu thereof in each instance “person”.

(2) Subsection 56 (2) of the said Act is repealed and the following substituted therefor:

Copy to be sent to recorded holder

(2) A copy of the dispute, statement of claim and affidavit shall be left by the disputant with the recorder who shall, not later than the next day after the filing of the dispute, transmit the copy by registered mail to the recorded holder or holders of the mining claim affected thereby, and, if the copy is not left, the recorder may refuse to file or note the dispute or may collect from the disputant the prescribed fee per page for making the copy.

(3) Subsection 56 (5) of the said Act is repealed and the following substituted therefor:

When not to be received

(5) A dispute shall not be received or entered against a claim,

- (a) after one year from the recording of the claim;
- (b) after the first prescribed unit of assessment work has been performed and filed and, where necessary, approved; or
- (c) except by leave of the Commissioner,
 - (i) after the validity of the claim has been adjudicated upon by the recorder or by the Commissioner, or
 - (ii) after it has been on record for sixty days and has already had a dispute entered against it.

(5a) Where a dispute is entered against a claim after the first prescribed unit of assessment work has been performed and filed but before the assessment work has been approved, where approval is necessary, the dispute shall be deemed to have been resolved in favour of the holder or holders of the claim if the assessment work is subsequently approved and the note of the dispute entered on the record of the claim shall be struck out by the recorder who shall by registered letter mailed not later than the following day notify the disputant of the recorder's action and the reason therefor.

Where
assessment
work
subsequently
approved

(4) Section 56 of the said Act is amended by adding thereto the following subsections:

(7) Notwithstanding clause 28 (c) and subsection 84 (1), where a dispute has not been filed against a mining claim a transferee who has acquired the claim in good faith may re-stake or cause to be re-staked the claim or any part thereof at any time and, upon filing with the recorder a notice in the prescribed form of the re-staking, the recorder shall, upon notice to all persons having a recorded interest in the original claim, order that the re-staked claim shall be deemed to have been recorded on the date of the recording of the original claim or any part thereof that has been re-staked.

Re-staking
claim

(8) In an order made under subsection (7), the recorder shall provide that orders, assessment work reports, instruments or other notations which have been entered against the original claim be entered in the record book in respect of the re-staked claim, and may include in the order such provisions as the recorder considers necessary to effect such entry in the record book of the re-staked claim.

Entry of
orders, etc.,
against re-
staked claim

35. Sections 57, 58 and 59 of the said Act are repealed.

36.—(1) Subsection 59a (1) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 48, section 1, is repealed and the following substituted therefor:

(1) A recorder may by order relieve an unpatented mining claim that is subject to forfeiture as a result of an administrative error on the part of the Crown from the forfeiture.

Relief from
forfeiture

(2) Subsection 59a (4) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 48, section 1, is repealed and the following substituted therefor:

(4) An order under subsection (1) or (3) may grant an extension of time for performing and reporting any work required to be performed or for applying and paying for a

Extension of
time

lease in respect of the claim or provide for the payment of any fees in respect of the claim.

37. Subsections 60 (1), (2), (3) and (4) of the said Act are repealed and the following substituted therefor:

Rights in
claim

(1) The staking out or the filing of an application for or the recording of a mining claim, or the acquisition of any right or interest in a mining claim by any person or all or any of such acts, does not confer upon that person,

(a) any right, title, interest or claim in or to the mining claim other than the right to proceed as in this Act provided to perform the prescribed assessment work or to obtain a lease from the Crown and, prior to the performance, filing and approval of the first prescribed unit of assessment work, the person is merely a licensee of the Crown and after that period and until he or she obtains a lease the person is a tenant at will of the Crown in respect of the mining claim; or

(b) any right to take, remove or otherwise dispose of any minerals found in, upon or under the mining claim.

38. Section 62 of the said Act is repealed and the following substituted therefor:

Permission to
test mineral
content

62.—(1) The Minister may give written permission, subject to such conditions as are prescribed, to mine, mill and refine mineral bearing substance from an unpatented mining claim for the purpose of testing mineral content.

Conditions

(2) Permission granted under subsection (1) shall be for a specified time and shall cover a specified quantity of mineral bearing substance.

Sale of end
product

(3) The end product of mining, milling and refining permitted under subsection (1), except as provided in subsection (4), shall not be sold or otherwise disposed of until the mining claim from which the minerals were taken is leased under this Act.

Disposition
of proceeds

(4) Subsection (3) does not apply where the Minister gives written permission for the sale or disposition and where the Minister does so, the sale or disposition shall be in accordance with such terms as the Minister may impose.

39. Section 63 of the said Act is repealed.

40. Subsection 64 (2) of the said Act is amended by adding at the commencement thereof “Unless ordered otherwise by the Minister”.

41. Section 70 of the said Act is amended by striking out “may” in the second line and inserting in lieu thereof “shall”.

42.—(1) Section 71 of the said Act is amended by striking out “nor shall any such instrument be recorded without an affidavit in the prescribed form, attached to or endorsed thereon, made by a subscribing witness to the instrument” in the eighth, ninth, tenth and eleventh lines.

(2) The said section 71 is further amended by adding thereto the following subsections:

(2) Any such instrument shall not be recorded unless an affidavit in the prescribed form, attached thereto or endorsed thereon, is made by a subscribing witness to the instrument. Affidavit of execution

(3) Subsection (2) does not apply to the execution of an instrument by a corporation under its seal. Corporations

43. Subsection 74 (3) of the said Act is repealed.

44.—(1) Subsection 75 (3) of the said Act is repealed and the following substituted therefor:

(3) The certificate is of no effect and does not constitute notice to any person of the proceeding until it is filed. Not to constitute notice until filed

(2) Subsection 75 (6) of the said Act is amended by striking out “upon the latter becoming, if he is not before, a licensee” in the fifteenth and sixteenth lines.

(3) Subsection 75 (7) of the said Act is amended by striking out “a fee of \$1, which” in the second and third lines and inserting in lieu thereof “any required fee and such”.

45. The heading preceding section 76 of the said Act is struck out and the following substituted therefor:

ASSESSMENT WORK

46. Section 76 of the said Act is repealed and the following substituted therefor:

76.—(1) The holder of a mining claim shall, following the recording of the claim, perform such annual units of assessment work as are prescribed. Assessment work

Report (2) Subject to subsection (3), every mining claim holder shall, not later than the anniversary date, file in the office of the recorder or such other location as is prescribed a report in the prescribed form of the assessment work done for the purpose of complying with subsection (1), together with such other information as may be prescribed.

Idem (3) The report mentioned in subsection (2) shall, in respect of any specified type of assessment work, be filed not later than such date earlier than the anniversary date as may be prescribed for that type of assessment work.

Credits measured in dollars spent (4) For the purpose of subsection (1), assessment work credits shall be measured in terms of dollars spent.

47. Sections 77 and 78 of the said Act are repealed and the following substituted therefor:

Types of work eligible for credits, etc. **77.**—(1) The types of work that are eligible for assessment work credits, the method of calculating and approving the credits for work performed and the distribution of credits for work performed to mining claims shall be determined in such manner as is prescribed.

Prospecting and regional surveys (2) Prospecting and regional surveys performed on Crown lands before the staking of a mining claim are eligible for assessment work credits in such manner as is prescribed.

Work on patented mining claims (3) Exploration work performed on patented mining claims may be allocated as assessment work to contiguous unpatented mining claims in the prescribed manner.

48. Section 79 of the said Act is repealed and the following substituted therefor:

Computing time for performance of assessment work **79.**—(1) In computing the time within which work upon a mining claim is required to be performed or within which application and payment for a lease may be made,

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- (a) if a permit under the *Forest Fires Prevention Act* or the *Public Lands Act* that is necessary for the beginning or carrying on of work under this Act is refused or the performance of such work is prohibited under those Acts or any other Act, or the holder defers the start of work or is delayed in its performance at the request, or by the actions, of the Crown, the time during which such refusal, prohibition, deferment or delay subsists, if the holder provides the Commissioner with satisfactory evidence of such refusal, prohibition, deferment or delay; or

- (b) the time during which proceedings in respect of the mining claim are pending before the Supreme Court, the Commissioner or the recorder, where the Commissioner is satisfied that any delay in settling the matter is not the fault of the holder,

shall be excluded, and the Commissioner may make an order fixing the date or dates by which the next or any prescribed units of work shall be performed and reported or by which an application and payment for lease may be made.

(2) Where the time for doing something under this Act is excluded, the next anniversary date after the exclusion in respect of the mining claim involved shall be deemed to be the date that falls after the anniversary date that would have occurred, except for this provision, by the number of days that equals the number of days of the exclusion, and all subsequent anniversary dates shall be adjusted accordingly.

Anniversary
date changed

(3) Notwithstanding anything in this Act, where in the opinion of the Minister special circumstances exist, the Minister may exclude the time within which work upon a mining claim is required to be performed or within which application and payment for lease may be made, and may by order fix the anniversary date or dates by which the next or any subsequent periods of work shall be performed and reported or by which application and payment for lease may be made.

Special
circumstances

49. Section 80 of the said Act is repealed.



50. Section 83 of the said Act is repealed and the following substituted therefor:

83.—(1) The holder of a mining claim may abandon the claim at any time by filing a notice of abandonment in the prescribed form with the recorder.

Right of
mining claim
holder to
abandon
claim

(2) The holder of a mining claim may abandon any part of the claim at any time on such conditions as are prescribed, by filing a notice of partial abandonment in the prescribed form with the recorder.

Abandonment
of part of
claim

(3) The recorder shall enter a note of the abandonment upon the record of the claim with the date of the receipt of the notice and shall forthwith post up in the recorder's office a notice of the abandonment with a sketch of the claim or part thereof to be abandoned.

Notice of
abandonment

(4) Where part of a claim has been abandoned under subsection (2), the recorder shall issue an order directing the

Order by
recorder

moving of posts or tags, the erection of new posts and the identification of new boundary lines and stating the time within which the work is to be completed.

Compliance
with order

(5) Where an order is issued under subsection (4), the mining claim holder affected shall file an affidavit in the prescribed form within the time set out in the order and a copy of the affidavit, marked with the date of the posting shall be posted by the recorder in the recorder's office.

Extension of
time by
recorder or
order of
abandonment

(6) Where the work set out in an order under subsection (4) has not been completed within the time set out in the order, the recorder may extend the time for completing the work or may order that the portion of the claim on which the work was to be done is abandoned and shall, in the case where an order of abandonment is made, by registered letter mailed not later than the next day after the making of the order, notify the holder of the recorder's action and the reason therefor, and a copy of the order shall be posted by the recorder in the recorder's office.


When claim
open for
staking

(7) Where part of a mining claim is abandoned under subsection (2) and an order of the recorder is made under subsection (6), the mining claim abandoned is open for staking from 9 o'clock in the forenoon of the eleventh day after the posting of the order of the recorder made under subsection (6).

Idem,
abandonment
of whole
claim

(8) Every mining claim abandoned under subsection (1) is open for staking from 9 o'clock in the forenoon of the eleventh day after the notice of abandonment is filed.

Idem,
abandonment
of part of
claim

(9) Where part of a mining claim is abandoned under subsection (2) and no order is made by the recorder under subsection (6), that part of the claim is open for staking from 9 o'clock in the forenoon of the eleventh day after the posting of the affidavit required under subsection (5). 

51. Section 84 of the said Act is repealed and the following substituted therefor:

Deemed
abandonment
of claim

84.—(1) Non-compliance by the licensee or holder of a mining claim with any requirement of this Act or the regulations as to the time or manner of the staking out and recording of a mining claim or with a direction of the recorder in regard thereto, within the time limited therefor, shall be deemed to be an abandonment, and the claim shall, without any declaration, entry or act on the part of the Crown or by any officer, unless otherwise ordered by the Commissioner, be forthwith opened to prospecting and staking out.



(2) Notwithstanding subsection (1), where in respect of a mining claim, no dispute is on file and, Saving

- (a) one year has elapsed since the day of the recording of the claim; or
- (b) the first prescribed unit of assessment work has been performed and filed and, where necessary, approved,

the mining claim shall be conclusively deemed to have been staked out and recorded in compliance with the requirements of this Act and the regulations. Upward arrow icon

52.—(1) Subsection 85 (1) of the said Act is amended by striking out “patent” in the second line and inserting in lieu thereof “lease”.

(2) Clause 85 (1) (a) of the said Act is repealed.

(3) Clause 85 (1) (c) of the said Act is repealed and the following substituted therefor:

- (c) if the prescribed work is not duly performed and reported as required by section 76 unless an application and payment for a lease of the mining claim is made under section 94.

(4) Clauses 85 (1) (d) and (e) of the said Act are repealed.

(5) Subsection 85 (2) of the said Act is amended by striking out “licensee” in the second line and inserting in lieu thereof “person”.

53. Sections 86 and 87 of the said Act are repealed and the following substituted therefor:

86.—(1) On application therefor being made to the recorder within thirty days before the expiration of the time for filing a report of assessment work, the recorder may allow an extension of time for performing and filing the report of the assessment work on such conditions as are prescribed. Extension of time by recorder

(2) Where forfeiture or loss of rights has occurred, the lands, mining rights or mining claims concerned are not open for staking until 7 o'clock in the forenoon of the day immediately following that upon which forfeiture or loss of rights occurred. Re-staking

When order
takes effect

(3) An order made by the recorder under this section comes into effect and shall be deemed to have been recorded at the time that the application was received in the office of the recorder, notwithstanding that such order may not have been immediately entered in the record book.

Cancellation
of record

(4) The recorder, upon a forfeiture or abandonment of or loss of rights in a mining claim, shall forthwith enter a note thereof, with the date of entry, upon the record of the claim and mark the record "Cancelled", and shall post up forthwith in the recorder's office a notice of cancellation.

54. Section 88 of the said Act is repealed and the following substituted therefor:

Death of
licensee or
holder

88. Where a licensee in whose name a mining claim has been staked out dies before the claim is recorded or where the holder of a claim dies before issue of the lease for the claim, no other person is, without leave of the Commissioner, entitled to stake out or record a mining claim upon any part of the same lands or to acquire any right, privilege or interest in respect thereof within twelve months after the death of such licensee or holder, and the Commissioner may at any time make such order as the Commissioner considers just for vesting the claim in the representative of such holder and extending the time for performing the work or applying for lease, notwithstanding any lapse, abandonment, cancellation, forfeiture or loss of rights under any provision of this Act.

55. Subsection 89 (1) of the said Act is repealed and the following substituted therefor:

Inspection by
Commissioner,
recorder or
inspector

(1) The Commissioner or the recorder may inspect or order an inspection of, and an inspector or other officer appointed by the Minister may inspect, a mining claim at any time with or without notice to the holder for the purpose of ascertaining whether this Act has been complied with, but after one year from the recording of the claim, or after the first prescribed unit of assessment work has been performed, filed and approved, no such inspection shall, unless ordered by the Minister under subsection 90 (5), be made for the purpose of ascertaining whether the claim has been staked out in the prescribed manner.

56.—(1) Subsection 90 (4) of the said Act is amended by striking out "licensee" in the seventh line and inserting in lieu thereof "holder".

(2) Section 90 of the said Act is amended by adding thereto the following subsection:

(5) Notwithstanding subsections 56 (5) and 84 (2), the Minister may challenge the validity of a mining claim at any time during the life of the claim and may direct the recorder to inspect the claim in accordance with section 89.

Inspection
ordered by
Minister

57. The said Act is further amended by adding thereto the following section:

91a.—(1) If there is an owner of the surface rights of the land comprising a mining claim, where a holder of the mining claim first proposes to do ground assessment work on such land, the holder shall give notice in the prescribed form to the owner of the surface rights of the holder's intention to perform the work.

Notice of
intention to
perform
assessment
work

(2) A person who has given notice under this section may enter on the land and perform the work at any time immediately following the day the notice is given.

Entry on
land to
perform work

(3) A recorder shall not record ground assessment work unless,

Where work
not to be
recorded

(a) the holder files with the recorder a certificate in the prescribed form establishing that the required notice was given; or

(b) the recorder determines that it is not feasible in the circumstances to give notice to the owner of the surface rights.

58. Section 92 of the said Act is repealed and the following substituted therefor:

92.—(1) In this section and in section 91a, "owner of the surface rights" means a person to whom the surface rights of land have been granted, sold, leased or located.

Definition

(2) Where there is an owner of surface rights of land or where land is occupied by a person who has made improvements thereon that, in the opinion of the Minister, entitles that person to compensation, a person who,

Right of
owner of
surface rights
to compen-
sation

(a) prospects, stakes out or causes to be staked out a mining claim or an area of land for a boring permit;

(b) formerly held a mining claim or an area of land for a boring permit that has been cancelled, abandoned or forfeited;

- (c) is the holder of a mining claim or an area of land for a boring permit and who performs assessment work; or
- (d) is the lessee or owner of mining lands and who carries on mining operations,

on such land, shall compensate the owner of the surface rights or the occupant of the lands, as the case may be, for damages sustained to the surface rights by such prospecting, staking out, assessment work or operations.

Right of
holder of
mining claim,
etc., to
compensation

(3) Every person who damages mineral exploration workings or claim posts, line posts, tags or surveyed boundary markers delineating mining lands shall compensate the holder of the mining claim or the owner or lessee of the mining lands, as the case may be, for damages sustained.

Determi-
nation of
compensation
by Commis-
sioner

(4) In default of agreement and upon application made in the prescribed form by either party, the amount and the time and manner of payment of compensation under subsection (2) or (3) shall be determined by the Commissioner after a hearing and, subject to appeal to the Divisional Court where the amount claimed exceeds \$1,000, the Commissioner's order is final.

Prohibiting
work pending
settlement

(5) The Commissioner may order the giving of security for payment of the compensation and may prohibit, pending the determination of the proceeding or until the compensation is paid or secured, further prospecting, staking out or working by any person.

Lien for
compensation

(6) The compensation is a special lien upon any mining claim or mining lands, as the case may be, and no further prospecting, staking out or performing of work, except by leave of the Commissioner, shall be done by any person after the time fixed for the payment or securing of the compensation, unless the compensation has been paid or secured as directed.

Power of
Commis-
sioner to
vary, etc.,
order

(7) The Commissioner, on notice to all interested parties and for good cause shown, on such terms as seem just, may by subsequent order or award at any time change, supplement, alter, vary or rescind any order made under this section.

Priorities

(8) In a hearing under subsection (4), the Commissioner shall take into account which of the rights was applied for first and, except where injustice would result, shall give the holder

of those rights due priority in the consideration of the dispute between the parties.

(9) Where unpatented mining claims are affected by an agreement entered into in respect of the compensation referred to in subsection (2), or by an order made under subsection (4), the agreement or a certified copy of the order, as the case may be, may be filed by the person to whom the compensation is payable in the office of the recorder upon payment of the prescribed fee.

Filing of agreement or order in office of recorder

(10) Where an unpatented mining claim is subsequently leased, the Minister shall cause any agreement or order filed in the recorder's office under subsection (9) that affects the leased lands to be registered against the lands in the proper land registry office and the person to whom the compensation is payable is entitled to enforce the terms of the agreement or order against the lessee and, subject to the *Registry Act* and the *Land Titles Act*, against any subsequent lessee of the land.

Registration of order or agreement

R.S.O. 1980, cc. 445, 230

59.—(1) Subsections 94 (1), (2), (3), (4) and (5) of the said Act are repealed and the following substituted therefor:

(1) Upon compliance with this Act and the regulations and upon payment of the rent for the first year, the holder of a mining claim is entitled to a lease of the claim.

Right to lease of claim

(2) The application and payment for a lease may be made to the recorder at any time after the first prescribed unit of assessment work on a mining claim is performed, filed and, if necessary, approved, and the application shall be accompanied by,

Application for lease

- (a) a certificate of performance of the prescribed units of assessment work that are required to be performed as of the time of application;
- (b) a plan of survey where required under section 108 or 109;
- (c) an agreement or an order of the Commissioner indicating that surface rights compensation, if any, has been paid, secured or settled; and
- (d) the prescribed fee.

(3) A lease under this section shall be for a term of twenty-one years at the prescribed rental, payable in advance, for the first year and at the prescribed rate for each subsequent year.

Term of lease

Lease of mining rights (4) The holder of a mining claim may elect to apply for a lease of the mining rights only.

Rental (5) Where a lease under this section is for mining rights only, the rental shall be at the prescribed rate for such a lease.

(2) Subsection 94 (6) of the said Act is repealed.

(3) Subsections 94 (8) and (9) of the said Act are repealed and the following substituted therefor:

Renewal lease rental (8) The annual rental for a renewal lease is the prescribed amount, payable in advance.

Refusal to renew lease (9) The Minister shall refuse to renew a lease unless,

(a) the production of minerals has occurred continuously for more than one year since the issuance or last renewal of the lease; or

(b) the lessee has demonstrated to the satisfaction of the Minister a reasonable effort to bring the property into production.

(4) Subsection 94 (12) of the said Act is amended by striking out “prescribed by” in the second line and inserting in lieu thereof “set out in”.

(5) Subsections 94 (16), (17), (18), (19) and (20) of the said Act are repealed and the following substituted therefor:

Disposition of surface rights
1989, c. 23
R.S.O. 1980, c. 413 (16) Any surface rights reserved in a lease or renewal thereof may be dealt with under the *Aggregate Resources Act, 1989* or under the *Public Lands Act* or the regulations made under those Acts.

Additional work where area of claim exceeds prescribed size (17) Where the area of the mining claim exceeds by more than 15 per cent the prescribed size for a mining claim and the claim is not reduced in size under section 110, there shall be performed additional assessment work or moneys paid in lieu thereof as prescribed for the excess area.

Contiguous claims (18) Where there is a group of contiguous claims held in the name of one claim holder and their average area does not exceed by more than 15 per cent the size prescribed for a mining claim, the Minister may direct that subsection (17) does not apply.

(19) Where additional work is required under subsection (17), the Minister may direct the time within which such work is to be performed and reported.

Where
additional
work
required

60.—(1) Subsections 95 (1) and (2) of the said Act are repealed and the following substituted therefor:

(1) In this section, “lease” means a lease of surface and mining rights or of mining rights issued under,

Definition

- (a) section 47, 52 or 100 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or a predecessor thereof; or
- (b) subsection 190 (3) of this Act, or a predecessor thereof,

and includes a renewal of such a lease.

(2) Subject to subsection (3), notwithstanding the provisions of a lease, the annual rental for a lease is the prescribed amount.

Amount of
rent

(2) Subsection 95 (4) of the said Act is repealed and the following substituted therefor:



(4) A lease referred to in clause (1) (a) is renewable in perpetuity for periods of ten years and every renewal shall date from the day following the expiry of the lease if application therefor is made within ninety days of the expiration of the lease or within such further period as the Minister, in the circumstances of the case, considers proper.

Renewal of
lease



(3) Subsection 95 (6) of the said Act is amended by striking out “has not been renewed under subsection (4) or” in the first and second lines.

(4) Subsection 95 (9) of the said Act is repealed and the following substituted therefor:

(9) The holder of a lease, upon application in writing therefor and upon the surrender of the lease and upon meeting the conditions set out in subsection 94 (9), may be issued a lease under section 94 for a term of twenty-one years and the rental for each year of the term thereof shall be that prescribed for the purposes of section 94 for years subsequent to the first year of a term.

Lease may
be issued
under s. 94

61. Section 96 of the said Act is repealed and the following substituted therefor:

Exchange of
lease

96.—(1) The holder of a lease issued under this Act, upon application in the prescribed form to the Minister, accompanied by the prescribed fee and upon the surrender of the lease, may be issued in exchange for that lease, on such terms and conditions as the Minister considers appropriate, two or more replacement leases.

Terms of
replacement
leases

(2) Replacement leases issued under subsection (1) shall cover together the same lands as were covered by the surrendered lease, shall be for a term equal to the balance of the term of the surrendered lease and shall be at the same rental rate per hectare as that lease.

62. Subsection 97 (4) of the said Act is repealed and the following substituted therefor:

Amount of
rent

(4) The annual rental of a lease or renewal under this section is the prescribed amount, payable in advance.

63. Subsection 102 (2) of the said Act is repealed and the following substituted therefor:

Disposition
of surface
rights
1989, c. 23
R.S.O. 1980,
c. 413

(2) Any surface rights reserved under this section may be dealt with under the *Aggregate Resources Act, 1989* or under the *Public Lands Act* or the regulations made under those Acts.

64.—(1) Subsection 108 (1) of the said Act is amended by striking out “patent” in the first line.

(2) Subsection 108 (2) of the said Act is repealed and the following substituted therefor:

Prescribed
methods of
surveying
R.S.O. 1980,
c. 493

(2) Subject to the *Surveys Act*, the prescribed methods and procedures shall be followed in the surveying of mining claims.

(3) Subsection 108 (5) of the said Act is repealed.

(4) Subsections 108 (6), (7), (8) and (9) of the said Act are repealed and the following substituted therefor:

Additional
work where
area exceeds
prescribed
size

(6) Where a perimeter survey is made under subsection (3), the rental shall be computed on the total area of the claims within the perimeter survey and, where the average area of the claims within the perimeter survey exceeds by more than 15 per cent the prescribed size for a mining claim, there shall be performed additional assessment work or moneys paid in lieu thereof as prescribed for the excess area.

(7) Where additional work is required under subsection (6), the Minister may set out in an order the time within which such work is to be performed and recorded.

Where
additional
work
required

(8) Before a perimeter survey is made, the Minister may order the inspection of the mining claims proposed to be included in the perimeter survey and an inspector or other officer of the Ministry shall prepare and submit to the Minister a report and plan according to the instructions provided by the Minister and the survey shall not be directed to be made unless the Minister is satisfied that the requirements of this Act have been complied with.

Inspection
before
perimeter
survey made

(9) The fee for an inspection under subsection (8) is the prescribed amount, payable in advance, and the Minister may require the applicant to provide the inspector with suitable transportation to the location of the claims.

Fee

65.—(1) Subsection 109 (1) of the said Act is amended by striking out “patent” in the first line and by inserting after “claim” in the seventh line “or the perimeter survey of mining claims”.

(2) Subsection 109 (2) of the said Act is repealed.

66.—(1) Subsection 110 (1) of the said Act is amended by striking out “acreage” in the third line and in the fourth line and inserting in lieu thereof in each instance “size”.

(2) Subsection 110 (2) of the said Act is amended by striking out “licensee” in the third line and in the fourteenth line and inserting in lieu thereof in each instance “holder”.

67. The subheading preceding section 112 of the said Act is struck out and the following substituted therefor:

PETROLEUM AND NATURAL GAS

68. Parts V and VI of the said Act are repealed.

69. The said Act is further amended by adding thereto the following Part:

PART VII

SURFACE MINING OF NON-METALLIC MINERALS

118.—(1) Any person who proposes to commence the surface mining of non-metallic minerals, excluding natural gas and petroleum, on Crown land not in a part of Ontario that

Surface
mining of
non-metallic
minerals

R.S.O. 1980,
c. 378
1989, c. 23

has been designated under the *Pits and Quarries Control Act* or under subsection 5 (2) of the *Aggregate Resources Act, 1989*, may proceed,

- (a) by applying for and obtaining an aggregate permit or a licence under the *Aggregate Resources Act, 1989*; or
- (b) by complying with the requirements of Part II of this Act.

Lease of
Crown land

(2) Any person who proposes to commence the surface mining of non-metallic minerals, excluding natural gas and petroleum, on Crown land in a part of Ontario that has been designated under the *Pits and Quarries Control Act* or under subsection 5 (2) of the *Aggregate Resources Act, 1989*, in addition to an aggregate permit or a licence issued under the *Aggregate Resources Act, 1989*, may also obtain a lease from the Crown for the lands affected by complying with the provisions of Part II of this Act.

Staking out
of mining
claim

119. Notwithstanding that an aggregate permit or a licence has been obtained under the *Aggregate Resources Act, 1989*, any licensee under this Act may stake out a mining claim or claims on Crown land affected by the permit or licence, in which case the provisions of this Act apply and any question of property damage shall be determined in the manner set out in section 92.

70.—(1) Subsection 131 (1) of the said Act is amended by striking out “licensees” in the third line and inserting in lieu thereof “persons”.

(2) Subsection 131 (2) of the said Act is amended by striking out “arising before the issue of a certificate of record of a mining claim” in the first and second lines.

(3) Subsection 131 (6) of the said Act is repealed and the following substituted therefor:

Recorder
may order
the removal
of witness
posts, etc.

- (6) The recorder may make an order directing a holder,
 - (a) to move, remove or alter corner posts, line posts or witness posts and the writing or inscribing thereon;
 - (b) to blaze, re-blaze, move or alter existing or missing claim lines;

- (c) to place or replace metal tags that are missing or have been removed or destroyed after having been affixed to any posts; or
- (d) to place or replace missing or defective posts and to affix tags to such posts,

and the recorder shall set out in the order the time within which the work shall be completed and reported to the recorder.

(6a) Where the work set out in an order under subsection (6) has been completed within the time set out in the order, the claim shall thereafter be deemed to be in compliance with this Act.

Claim deemed in compliance with Act

(4) Subsection 131 (7) of the said Act is repealed and the following substituted therefor:

(7) Where the work set out in an order under subsection (6) has not been completed within the time set out in the order, the recorder may extend the time for completing the work or may cancel the claim or claims on which the work was to have been done and shall, in the case of cancellation, by registered letter, mailed not later than the next day after the cancellation, notify the holder of the recorder's action and the reason therefor.

Recorder may extend time or cancel claim

(5) Subsection 131 (8) of the said Act is repealed and the following substituted therefor:

(8) This section applies to the manner in which the metal tags have been affixed to the corner posts notwithstanding that the time prescribed for affixing the tags has not expired.

Application

71. Subsection 133 (2) of the said Act is repealed and the following substituted therefor:

(2) Where, in the opinion of the Minister, the public interest is affected by a decision, act or thing mentioned in subsection (1), an officer or employee of the Ministry designated by the Minister for that purpose may,

Where public interest affected

- (a) be added as a party to an appeal taken under subsection (1); or
- (b) take an appeal under subsection (1), in which case no fee in respect of the appeal is payable.

72.—(1) Subsection 135 (1) of the said Act is repealed and the following substituted therefor:

Application
for
appointment
for hearing

(1) Application to the Commissioner for an appointment for a hearing may be made in writing by any party to the proceeding upon such notice and to such persons as the Commissioner directs and shall be accompanied by the prescribed fee for recording any order made by the Commissioner in the matter.

(2) Subsection 135 (4) of the said Act is repealed and the following substituted therefor:

Leave for
hearing

(4) In any matter or proceeding, other than an appeal, in any case where leave to take the proceeding is necessary, the Commissioner may give leave upon such terms as to security for costs or otherwise as the Commissioner considers just.

73.—(1) Clause 137 (1) (b) of the said Act is amended by inserting after “things” in the third line “under oath or otherwise”.

(2) Subsection 137 (1) of the said Act is amended by striking out “and” at the end of clause (d) and by adding thereto the following clauses:

1984, c. 11

- (f) upon the application of a party to the proceedings, order the examination of any other party before an official examiner appointed under the *Courts of Justice Act, 1984*; and
- (g) order any party to the proceedings who intends to present evidence at the hearing to file with the Commissioner and serve on each of the other parties, prior to the appearance of any witness and within such time as the Commissioner directs, a statement indicating the evidence intended to be relied upon.

74.—(1) Section 150 of the said Act is amended by adding thereto the following subsections:

When order
of Commis-
sioner takes
effect

(1a) Every order or judgment of the Commissioner shall take effect immediately upon its signing, subject to any express provision therein.

Oral reasons
R.S.O. 1980,
c. 484

(1b) Notwithstanding section 17 of the *Statutory Powers Procedure Act*, the reasons for a decision of the Commissioner may be delivered orally.

(1c) Any party to a proceeding may cause an order or judgment of the Commissioner to be filed in the office of the recorder.

Filing of order

(1d) The recorder shall forthwith give notice in writing of the filing by registered mail or otherwise to the solicitors of the parties appearing by solicitor and to the parties not represented by a solicitor.

Notice of filing

(1e) Where the order or judgment is not filed with the recorder within fifteen days of the order being signed, the Commissioner shall cause a duplicate thereof to be filed with the recorder.

Filing of duplicate order

(2) Subsections 150 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) The Commissioner shall transmit the evidence, the exhibits, the statement, if any, of view or of special knowledge or skill, and the reasons for any order or judgment to the recorder.

Transmission of evidence, etc., to recorder

75. Section 151 of the said Act is repealed and the following substituted therefor:

151. Where a decision of the Commissioner finally disposes of the matter in question so far as the Commissioner is concerned, the Commissioner shall send the order or judgment to the parties by registered mail.

Final order or judgment sent to parties

76. Section 152 of the said Act is repealed and the following substituted therefor:

152. Any party to a proceeding is entitled on payment of the prescribed fee to a certified copy of any order or judgment.

Certified copy of order or judgment

77. Part IX of the said Act is repealed and the following substituted therefor:

PART IX

OPERATION OF MINES

160.—(1) In this Part,

Definitions

“abandoned” means the proponent has ceased or suspended indefinitely advanced exploration, mining, or mine production on the site, without rehabilitating the site;

- “advanced exploration” means the excavation of an exploratory shaft, adit, or decline, the extraction of material in excess of the prescribed quantity, the installation of a mill for test purposes or any other prescribed work;
- “closed out” means that all the requirements of an accepted closure plan have been complied with and is the final stage of closure;
- “closure” means the temporary suspension, inactivity or close out of advanced exploration, mining or mine production;
- “closure plan” means a plan prepared in the prescribed manner to rehabilitate a project at any stage of closure and includes the information, particulars, maps and plans prescribed, as well as provision in the prescribed manner of financial assurance to the Crown for the performance of the requirements of the closure plan;
- “Director” means the Director of Mine Rehabilitation for the mining division or divisions in which is situate the land in respect of which an act, matter or thing is to be done under this Part;
- “inactivity” means that advanced exploration, mine production and mining operations on a site have been suspended indefinitely in accordance with a closure plan, and although protective measures are in place on the site, the site is no longer being monitored by the proponent on a continuous basis;
- “mine production” means mining that is producing any mineral or mineral-bearing substance either for immediate sale or for stockpiling for ultimate sale;
- “progressive rehabilitation” means rehabilitation done continually and sequentially, within a reasonable time, during the entire period that the project continues;
- “project” means a mine or the activity of advanced exploration, mining or mine production;
- “proponent” means the holder of an unpatented mining claim or licence of occupation or an owner as defined in paragraph 21 of section 1;
- “protective measures” means steps taken in accordance with the prescribed standards to prevent personal injury or property damage that is reasonably foreseeable as a result of closure commencing;

“rehabilitate” means measures taken in accordance with the prescribed standards to treat the land or lands on which advanced exploration, mining or mine production has occurred so that the use or condition of the land or lands,

(a) is restored to its former use or condition, or

(b) is made suitable for a use that the Director sees fit,

and includes taking protective measures;

“site” means the land or lands on which a project is located;

“temporary suspension” means advanced exploration, mining or mine production have been suspended, in accordance with an accepted closure plan, on either a planned or unplanned basis, but the site is being monitored on a continuous basis by the proponent and protective measures are in place.

(2) For greater certainty, but without restricting the scope of this Part, this Part applies to projects including, Application of Part

(a) the underground mining of minerals, excluding natural gas, petroleum and salt by brining method;

(b) the surface mining of metallic minerals;

(c) the surface mining of non-metallic minerals, excluding natural gas and petroleum, on land that is neither Crown land nor land in parts of Ontario that have been designated under the *Pits and Quarries Control Act* or under subsection 5 (2) of the *Aggregate Resources Act, 1989*;

R.S.O. 1980,
c. 378
1989, c. 23

(d) advanced exploration on mining lands.

DIRECTORS AND MINERAL DEVELOPMENT OFFICERS

161.—(1) The Minister may appoint as Mineral Development Officers such employees of the Ministry as the Minister considers necessary, whose function it is to co-ordinate and expedite communication between the mining industry, the public and affected ministries and agencies of the Government of Ontario.

Mineral
Development
Officers

(2) The Minister may appoint an officer or employee of the Ministry as Director of Mine Rehabilitation for each such mining division or group of mining divisions as the appointment specifies.

Directors

ADVANCED EXPLORATION

Closure plan,
advanced
exploration

161a.—(1) No proponent shall commence or recommence advanced exploration without providing the Director with notice in the form and manner prescribed and the project may proceed unless, within thirty days of receiving the notice, the Director in writing has required the proponent to,

- (a) give public notice at the prescribed time and in the prescribed form and manner;
- (b) submit a proposed closure plan; or
- (c) comply with both clauses (a) and (b).

Where public
notice only
required

(2) Where the Director has required the proponent to give public notice only under clause (1) (a), the project may proceed after public notice has been given.

Changes to
closure plan

(3) Where the Director has required the proponent to submit a proposed closure plan under clause (1) (b),

- (a) the Director may by written notice require changes to the proposed closure plan; and
- (b) the project shall not proceed until the Director has accepted in writing the closure plan, and the public notice, if required under clause (1) (a), has been given.

MINE PRODUCTION

Closure plan,
mine
production

161b.—(1) No proponent shall commence or recommence mine production without,

- (a) providing the Director with notice in the prescribed form and manner;
- (b) giving public notice at the prescribed time and in the prescribed form and manner;
- (c) submitting a proposed closure plan; and
- (d) receiving the Director's written acceptance of the closure plan required by clause (c).

Changes to
closure plan

(2) The Director may require changes to a proposed closure plan required by clause (1) (c) prior to accepting it.

PROGRESSIVE REHABILITATION

161c. A proponent shall take all reasonable steps to progressively rehabilitate a site whether or not closure has commenced or an accepted closure plan is in place.

Progressive rehabilitation

CLOSURE PLANS

161d.—(1) Every proponent whose project is subject to a closure plan accepted under this Part shall comply with the closure plan.

Compliance with closure plan

(2) Where closure commences on a site, subject to a closure plan, the proponent shall,

Notice closure has commenced

(a) forthwith notify the Director in writing that closure has commenced; and

(b) comply with the requirements of the closure plan.

(3) Where a project has commenced or recommenced under section 161a or 161b, within twelve months of the commencement or recommencement, and for every twelve-month period following thereafter while the project continues, the proponent shall submit annually to the Director a report prepared in the prescribed manner.

Annual report to Director

(4) If, on the receipt of the report required under subsection (3) or on the basis of information received from a rehabilitation inspector under subsection 161f (1), the Director has reasonable grounds for believing,

Submission of, or amendments to, closure plan

(a) that the closure plan, including the financial assurance requirement, is inadequate to properly rehabilitate the site because the project has either expanded or other conditions have changed; or

(b) in the case of an advanced exploration project not currently subject to a closure plan, the project has expanded or other conditions have changed to a point which necessitate a closure plan,

the Director may require by written notice the proponent to submit to the Director a proposed closure plan for the Director's consideration, or, where a closure plan is already in place, to submit proposed amendments to a closure plan, including proposals respecting an increase in the amount of financial assurance required to rehabilitate the site.

Notice of expansion or alteration of project

(5) Where a proponent plans to expand or alter a project, the proponent shall forthwith give written notice in the prescribed form to the Director.

Changes to closure plan

(6) Where the Director has received either proposed amendments to existing closure plans or proposed closure plans under subsection (4), the Director may require changes to the proposed amendments or plan before notifying the proponent that the proposed amendments or plan are acceptable.

Project subject to plan or amended plan

(7) Upon receipt of the written notice of the Director that the proposed amendments or plan that may be required under subsection (4) are acceptable, the project shall operate subject to the plan or amended plan, as the case may be.

FINANCIAL ASSURANCE

Form and amount of financial assurance
R.S.C. 1985,
c. B-1
R.S.O. 1980,
c. 192

161e.—(1) The financial assurance required as part of a closure plan shall be in the form of cash, a letter of credit from a bank named in Schedule A to the *Bank Act* (Canada), a bond of a guarantee company approved under the *Guarantee Companies Securities Act* or another form of security acceptable to the Director and shall be in the amount specified in the closure plan accepted by the Director or any amendment thereto.

Order providing for performance of rehabilitation measure

(2) Where the Director has reasonable and probable grounds to believe that any rehabilitation measure required by the accepted closure plan in respect of which financial assurance was given has not been or will not be carried out in accordance with the closure plan, the Director by order may provide for the performance of the rehabilitation measure in the manner set out in subsection (5).

Notice

(3) The Director shall give the proponent written notice of the Director's intention to issue the order referred to in subsection (2) at least forty-five days prior to the date the order is to be issued.

Parties affected

(4) Both the notice and the order under this section shall be directed to the proponent to whom the approval for the closure plan was issued or directed and to any person to the knowledge of the Director that has provided the financial assurance for or on behalf of the proponent to whom the approval of the closure plan was issued or shall be directed to the successor or assignee of such person.

Realization of security

(5) Upon the issuance of an order by the Director under subsection (2), the Crown may,

- (a) use any cash;
- (b) realize any bond or letter of credit; and
- (c) enforce any other security,

provided or obtained as the financial assurance for the performance of the rehabilitation measures and may carry out the rehabilitation measures, or appoint an agent to do so, as the Director considers necessary.

(6) A proponent may apply to the Director for a reduction of the financial assurance to an amount consistent with the financial requirements of the rehabilitation work left to be completed where, Application for reduction of financial assurance

- (a) work has been performed in accordance with the requirements of an accepted closure plan; or
- (b) a reduction in the financial assurance requirement is justified in a report submitted under subsection 161d (3).

REHABILITATION INSPECTORS

161f.—(1) For the purposes of monitoring the closure of projects, including mines that have been abandoned, the Minister may designate in writing any person who may, but need not be, an employee of the Ministry as a rehabilitation inspector. Rehabilitation inspectors

(2) For the purpose of carrying out the duties and exercising the powers under this Part, a rehabilitation inspector may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, and in the exercise of that authority may, Inspections by rehabilitation inspector

- (a) enter into or onto any mining lands or premises connected or associated with any project or abandoned mine, other than a room or place actually used as a dwelling;
- (b) make such inspections, examinations, inquiries or tests considered necessary in order to determine the nature and extent of any existing or potential hazards on mining lands;
- (c) in any inspection, examination, inquiry or test, be accompanied and assisted by any person having special, expert or professional knowledge of any

matter relevant to the inspection, examination, inquiry or test;

- (d) request the production of any drawings, specifications, licence, document, record or report;
- (e) on giving a receipt therefor, remove any drawing, specifications, licence, document, record or report produced in response to a request under clause (d) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced them;
- (f) inspect any work related to rehabilitation necessary to complete a report to the Director under subsection (1); and
- (g) make reasonable inquiries of any person, orally or in writing.

Inspection to
be permitted

(3) A proponent shall forthwith on request permit a rehabilitation inspector to carry out any inspection of any place, other than any room actually used as a dwelling, under subsection (2).

Obstruction
prohibited

(4) No person shall hinder or obstruct a rehabilitation inspector in the lawful performance of duties or furnish the rehabilitation inspector with false information or refuse to furnish information required for the purposes of this Part and the regulations.

Inspection
warrant

(5) Where a provincial judge or justice of the peace is satisfied on evidence upon oath by a rehabilitation inspector that there is reasonable ground for believing that it is appropriate for the administration of this Part or the regulations made thereunder for the rehabilitation inspector to do anything set out in subsection (2), and that the rehabilitation inspector may not be able to effectively carry out the duties assigned without an order under this section because,

- (a) a person has prevented the rehabilitation inspector from doing anything set out in subsection (2);
- (b) there is reasonable ground to believe that a person may prevent a rehabilitation inspector doing anything set out in subsection (2); or
- (c) it is impractical because of the remoteness of the place to be inspected or because of any other reason, for the rehabilitation inspector to obtain an

order under this section without delay if access is denied,

the judge or justice may issue or renew a warrant in the prescribed form authorizing the rehabilitation inspector named in the warrant to do anything set out in subsection (2) and specified in the warrant for the period of time set out in the order.

(6) Where a provincial judge or justice of the peace is satisfied on evidence upon oath of a rehabilitation inspector that there is reasonable and probable ground for believing that,

Search
warrant

- (a) an offence under this Part has been committed; and
- (b) the entry into and search of a place actually used as a dwelling will afford evidence as to the commission of the offence,

the judge or justice may issue or renew a warrant in the prescribed form authorizing the rehabilitation inspector named in the warrant to enter and search the room or place with such reasonable assistance as may be necessary and upon giving a receipt therefor to remove from the room or place any document or thing that may afford evidence of the offence for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the room or place from which they were removed.

(7) A warrant under subsection (5) or (6) shall be executed at reasonable times as specified in the warrant and shall state the date upon which it expires, which shall be not later than fifteen days after the warrant is issued.

When to be
executed and
expiry

(8) Copies of, or extracts from, documents or things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Admissibility
of copies

(9) Upon request, a rehabilitation inspector who exercises a power set out in subsection (2) shall identify himself or herself as a rehabilitation inspector either by the production of a copy of the rehabilitation inspector's designation or in some other manner and shall explain the purpose of the inspection.

Identification

EXISTING PROJECTS

161g.—(1) Within ninety days of the coming into force of this Part, every proponent of a producing mine or of a mine

Notice to
Director

from which production is temporarily suspended shall give a notice in writing to the Director that contains the prescribed information relating to that mine.

Determina-
tion of
Minister of
time for
submission of
closure plan

(2) On the Director receiving a notice under subsection (1), the Minister shall determine the period of time within which the proponent must submit to the Director a proposed closure plan in respect of that mine.

Notice to
proponent by
Director

(3) The Director shall notify in writing a proponent who has given notice under subsection (1) of the period of time determined by the Minister within which the proponent must submit to the Director a proposed closure plan.

Submission
of closure
plan to
Director

(4) A proponent who has received a notice under subsection (3) shall submit the required closure plan to the Director within the period of time specified in the notice.

Notice to
submit
closure plan

(5) The Director, within ninety days of the coming into force of this Part, may notify in writing any proponent of advanced exploration that has commenced before and is continuing on the day this Part comes into force of the period of time within which the proponent must submit a proposed closure plan.

Submission
of closure
plan to
Director

(6) A proponent who has received a notice under subsection (5) shall submit the required closure plan to the Director within the time specified in the notice.

Changes to
closure plan

(7) Prior to the Director informing the proponent that the closure plan required under subsection (4) or (6) is acceptable, the Director may by written notice require changes to the closure plan.

Mine to
operate
subject to
closure plan

(8) On receiving written notification from the Director that the closure plan required under subsection (4) or (6) is acceptable, the project shall operate subject to the closure plan and sections 161c, 161d, 161e and 161f shall apply.

Where
project
abandoned
after Part
comes into
force

161h.—(1) Notwithstanding section 161g, where a proponent takes steps to abandon the project on either an indefinite or permanent basis after the day this Part comes into force but before the Director informs the proponent that the closure plan required under subsection 161g (4) or (6) is acceptable, the proponent shall give written notice to the Director and shall take all reasonable steps to rehabilitate the site.

Order to
rehabilitate
site

(2) Where the Director has reasonable grounds for believing that a proponent has not complied with subsection (1), the Director may order the proponent to rehabilitate the site.

(3) Where, within a reasonable period of time, a proponent fails to comply with the order of the Director made under subsection (2), the Director may declare the project abandoned and may have the Crown or an agent thereof enter onto or into the site to implement rehabilitative measures.

Declaration
that mine
abandoned

(4) The Director shall not have the Crown or an agent thereof take the measures referred to in subsection (3) until the Director has given the proponent notice in the prescribed form and manner of the Director's declaration.

Notice of
declaration

(5) Where under subsection (3) the Director has declared a project abandoned and the proponent has possession of the site as a lessee, the Lieutenant Governor in Council, on the recommendation of the Minister, may declare the lease void, and subsections 94 (12), (13) and (14) apply with necessary modifications.

Declaration
that lease
void

(6) The Director shall not take the steps referred to in subsection (5) until the Director has given the proponent the prescribed notice required under subsection (4), including in that notice the Director's intention to recommend to the Minister the steps referred to in subsection (5).

Notice to
proponent

161i.—(1) The Director may by written notice require the proponent of a project the Director considers abandoned on the day this Part comes into force to submit within a specified period of time a proposed closure plan to rehabilitate the site.

Where
project
abandoned
when Part
comes into
force

(2) Prior to the Director informing the proponent that a closure plan required under subsection (1) is acceptable, the Director may by written notice require changes to the closure plan.

Changes to
closure plan

(3) On receiving written notification from the Director that a closure plan required under subsection (1) is acceptable, the proponent shall complete the rehabilitation of the site in accordance with the closure plan.

Rehabili-
tation of site

(4) Where the proponent of a site fails to comply with the Director's requirements under subsection (1) or (2), the Director may declare the project abandoned and may have the Crown or an agent of the Crown enter onto or into the site to implement rehabilitative measures.

Declaration
that mine
abandoned

(5) The Director shall not have the Crown or an agent thereof take the steps referred to in subsection (4) until the Director has given the proponent notice in the prescribed form and manner of the Director's declaration.

Notice of
declaration

Declaration
that lease
forfeited

(6) Where under subsection (4) the Director has declared a project abandoned and the proponent has possession of the site as a lessee, the Lieutenant Governor in Council, on the recommendation of the Minister, may declare the lease void, and subsections 94 (12), (13) and (14) apply with necessary modifications.

Notice to
proponent

(7) The Director shall not take the steps referred to in subsection (6) until the Director has given the proponent the prescribed notice required under subsection (5), including in that notice the Director's intention to recommend to the Minister the steps referred to in subsection (6).

VOLUNTARY SURRENDER OR ABANDONMENT

Refusal of
voluntary
surrender

161j.—(1) Before accepting the voluntary surrender of lands referred to in section 198, where the Director has reasonable grounds for believing that the proponent may have failed to rehabilitate the site in a manner consistent with a closure plan accepted by the Director, or where no closure plan exists, in accordance with the prescribed standards for rehabilitation, the Minister may refuse to accept the surrender of such lands, and, upon such refusal, the Director may order the proponent to comply with the requirements of the accepted closure plan or to rehabilitate the site in accordance with the prescribed standards.

Application
for injunction

(2) Where the proponent subject to an order under subsection (1) is an owner, the Director may register the order against the land or lands comprising the site in the proper land registry office and may apply to a Justice of the High Court for an injunction preventing the sale of the land or lands comprising the site, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands.

Refusal of
consent to
transfer lease

(3) Where the proponent subject to an order under subsection (1) is a lessee, the Director may recommend to the Minister that the Minister not consent to the transfer of the lease.

Where lease
expires

(4) Where the proponent subject to a Director's order under subsection (1) is a lessee under a lease which expires during the period in which the Director's order is in force, the lessee is not by reason only of the expiry of the lease relieved of the lessee's duties under this section.

Refusal of
consent to
transfer of
licence

(5) Where the proponent subject to an order under subsection (1) is the holder of a licence of occupation, the Direc-

tor may recommend to the Minister that the Minister not consent to a transfer of the licence.

(6) Notwithstanding section 83, where the proponent is a mining claim holder and where the Director has reasonable grounds for believing that the proponent may have failed to rehabilitate the site in a manner consistent with a closure plan accepted by the Director, or where no closure plan exists, in accordance with the prescribed standards for rehabilitation, the holder may not abandon the mining claim and the Director may order the proponent to comply with the requirement of the accepted closure plan, or to rehabilitate the site in accordance with the prescribed standards.

Where
mining claim
not to be
abandoned

(7) If a person subject to an order under subsection (1) or (6) fails to comply with the order, the Director may,

Realization
of security

- (a) where a closure plan applies, proceed and realize on the financial assurance under the provisions of section 161e; or
- (b) where no closure plan is in place, have the Crown, or an agent thereof, carry out rehabilitation measures in accordance with the prescribed standards.

COST OF WORK COMPLETED

161k.—(1) Where under subsection 161h (3) or 161i (4) the Director has the Crown or an agent of the Crown carry out rehabilitation measures, the resulting cost to the Crown is a debt due to the Crown and,

Where cost
debt due to
Crown

- (a) forms a lien and a charge on the site in favour of the Crown, realizable by action for sale of any part or all of the land or lands subject to it, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands; and
- (b) is recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected.

(2) The cost to the Crown of carrying out the rehabilitative measures under clause 161j (7) (b) is a debt due to the Crown recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected.

Idem

(3) Where under subsection 161e (5) the Crown or an agent of the Crown carries out rehabilitation measures and the

Idem

financial assurance held by the Crown is insufficient to cover the total cost incurred by the Crown in completing the rehabilitation measures, the extra cost not covered by the financial assurance is a debt due to the Crown which,

- (a) forms a lien and a charge on the site in favour of the Crown realizable by action for sale of any part or all of the land or lands comprising the site subject to the lien, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands; and
- (b) is recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected.

Registration
as charge

(4) Notice of the debt described in subsections (1) and (3) may be registered as a charge in the proper land registry office and no transfer of or other dealing with the site shall take place until the debt is paid and the notice is cancelled.

HEARINGS AND APPEALS

Appeal to
Commissioner

161-1.—(1) Where the Director,

- (a) requires a closure plan under clause 161d (4) (b) or subsection 161i (1);
- (b) requires changes to either an existing or proposed closure plan under subsection 161a (3), 161b (2), 161d (6), 161g (7) or 161i (2);
- (c) orders the performance of rehabilitation measures under subsection 161e (2);
- (d) orders the proponent to rehabilitate the site under subsection 161h (2); or
- (e) declares a project abandoned under subsection 161h (3) or 161i (4),

the proponent may appeal the Director's requirement, order or declaration to the Commissioner, if within thirty days of receiving the notice of the Director requiring the changes or proposed closure plans referred to in clause (a) or (b), receiving a Director's order referred to in clause (c) or (d), or receiving a Director's declaration referred to in clause (e), the proponent serves the Director with the prescribed notice requiring a hearing before the Commissioner, and, within

thirty days of being served, the Director shall refer the matter to the Commissioner for the hearing.

(2) On the service of a notice on the Director under subsection (1) requiring a hearing before the Commissioner, the requirement, order or decision of the Director is stayed until the disposition of the appeal by the Commissioner, unless upon application with notice by the Director, the Commissioner removes the stay where the matter relates to,

Automatic stay unless removed

- (a) changes to either an existing or proposed closure plan referred to in clause (1) (b); or
- (b) an order requiring the performance of rehabilitation measures referred to in clause (1) (c) or (d).

(3) Notwithstanding subsection (2), where the proponent appeals to the Commissioner under subsection (1) from a Director's requirement for changes to an existing closure plan under subsection 161d (4) and one of the changes required is to increase the amount of financial assurance required for the closure plan, the Commissioner shall refuse to hear the appeal unless the proponent has provided to the Director along with the notice required under subsection (1) the extra amount of financial assurance required under the closure plan to be held by the Crown pending the outcome of the proponent's appeal.

Provision of additional financial assurance

(4) The Commissioner upon application with notice by the proponent may waive the requirement under subsection (3) if the Commissioner considers it just to do so.

Waiver

(5) Upon hearing the appeal of the proponent, the Commissioner may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing.

Power of Commissioner on appeal

(6) Sections 135, 136, 137 and 139 to 152 of this Act apply to appeals under this section with necessary modifications.

Application

(7) An appeal lies to the Divisional Court on a question of law from any decision of the Commissioner under subsection (5) in accordance with the Rules of Civil Procedure.

Appeal to Divisional Court

(8) A party to a hearing before the Commissioner may, within thirty days after receipt of the Commissioner's decision or within thirty days after final disposition of an appeal, if any, under subsection (7), appeal in writing to the Minister on any matter other than a question of law and the Minister shall confirm, alter or revoke the decision of the Commissioner as to the matter in appeal as the Minister considers in the public interest.

Appeal to Minister

Parties

(9) The person requiring the hearing, the Director and any other person specified by the Commissioner are parties to the hearing.

SERVICE

Service of notice

161m.—(1) Any notice required to be served under this Part or the regulations made in respect thereto is sufficiently served if delivered personally or sent by registered mail addressed to the person upon whom service is to be made at the last address of service appearing on the records of the Ministry.

When service deemed made

(2) Service made by registered mail shall be deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made establishes the person did not, acting in good faith, and for a cause beyond that person's control, receive a notice until a later date.

PART IX-A

BRINE WELLS

Definitions

162.—(1) In this section,

“brine well” means a hole or opening in the ground for use in brining;

“brining” means the extraction of salt in solution by any method;

“chief engineer” means a person designated by the Minister as chief engineer for the purposes of this section.

Permit to bore or drill a brine well

(2) No person shall drill or bore a brine well except under the authority of a permit in writing issued by the chief engineer upon application therefor in the prescribed form.

Permits not issued

(3) A permit shall not be issued,

(a) to authorize a person to drill or bore a brine well on property in which the person does not own, hold or lease, or is not otherwise entitled to, the mining rights; or

(b) where the proposed brine well is nearer the boundary of such property than 150 metres.

Location of brine well

(4) The chief engineer may reduce or extend the distance referred to in clause (3) (b) where in his or her opinion it is

advisable to do so and shall notify the applicant of any such reduction or extension within thirty days from the date upon which the application for the permit is filed.

(5) A permit is subject to the condition that the brine well in respect of which it is issued is bored or drilled in the location described in the permit.

Condition of permit

(6) A permit shall be issued or refused within thirty days from the date on which the application therefor is filed, except that, where notice has been given by the chief engineer under subsection (4), the permit shall be issued upon the receipt by the chief engineer of the applicant's consent thereto.

Time for issuance of permit

(7) Where a person drills or bores a brine well, he or she shall forward a log of the drilling or boring in the prescribed form in duplicate to the chief engineer within thirty days of the completion of the drilling or boring operations, and, upon the person's request in writing, the log shall be confidential for a period of six months.

Log of drilling operations

(8) A person boring or drilling a brine well shall take such reasonable measures as are necessary to control the infiltration of water from one horizon to any other horizon that may be penetrated during the drilling or boring operations.

Protection of water horizons

(9) All brine wells shall be cased and equipped so as to reasonably ensure against the uncontrolled flow of oil, natural gas, brine or water.

Protection of deposits

(10) Casing and equipment shall be in good condition and of a thickness and strength adequate to withstand any fluid pressure to which they might normally be subjected.

Standard of casing and equipment

(11) Where practicable, all brine wells shall be plugged by the person operating them, before being abandoned, in a manner that will,

Plugging of abandoned wells

(a) reasonably ensure that salt horizons and potential oil or natural gas producing horizons are protected; and

(b) retain water and brine in their original formations.

(12) Before commencing to plug a brine well, the person proposing to carry out the plugging operations shall report the particulars thereof to the chief engineer in the prescribed form.

Report of proposed plugging

Record of
plugging
operations

(13) Where a person plugs a brine well, he or she shall forward a record of the plugging in the prescribed form in duplicate to the chief engineer within thirty days of the completion of the plugging operations.

PART IX-B

STATISTICAL RETURNS

Annual
report

163.—(1) For the purposes of tabulation, every owner of a mine shall, on or before the 31st day of March in each year, send to the Minister on the forms provided a report of activities for the preceding year ending on the 31st day of December showing,

- (a) the nature of the work performed and the sums spent on mining and exploration;
- (b) the sums allocated for capital expenditures and repairs;
- (c) the current state of ore reserves;
- (d) the quantity and value of mineral production;
- (e) the number of employees; and
- (f) the revenues and expenses entailed in mining and exploration activities,

and the report shall be accompanied by such other information, plans and documents as the Minister requires, including, without limiting the scope of the requirement, information, plans and documents respecting,

- (g) inventory;
- (h) fuel and electricity consumed;
- (i) mining supplies and materials used;
- (j) non-mining supplies and materials used;
- (k) mining products, shipments and destinations;
- (l) non-mining products;
- (m) production details; and
- (n) wastes produced.

(2) The Minister may require an owner to send monthly or quarterly reports within such times as the Minister specifies.

Monthly or quarterly report

(3) In the event of the bankruptcy or winding-up of an owner, the trustee or liquidator shall, at the request of the Minister, send the report to the Minister.

Bankruptcy, etc.

(4) The Minister may require a licensee or permittee operating a pit or quarry under the *Aggregate Resources Act, 1989* to send information to the Minister in accordance with this section, and, where the Minister does so, subsections (1), (2) and (3) apply with necessary modifications.

Pit or quarry operations
1989, c. 23

78. Section 175 of the said Act is repealed.

79. Section 176 of the said Act is repealed and the following substituted therefor:

176.—(1) Every person who contravenes any provision of Part IX or the regulations made in respect thereto is guilty of an offence and on conviction is liable to a fine of not more than \$30,000 for each day on which the offence occurs or continues.

Penalty for offence against Part IX

(2) Every person who is subject to a Director's order under Part IX and who fails to take all reasonable steps to obey the conditions of the order is guilty of an offence and on conviction is liable to a fine of not more than \$30,000 for each day on which the offence occurs or continues.

Failure to comply with order of Director

(3) Where any person fails to,

Application for restraining order

- (a) comply with section 161a or 161b before commencing or recommencing a project;
- (b) comply with an accepted closure plan as required under subsection 161d (1);
- (c) submit the report required under subsection 161d (3);
- (d) give the Director notice of a planned expansion or alteration as required by subsection 161d (5); or
- (e) give the notice required under subsection 161g (1) or submit a closure plan required under subsection 161g (4) or (6),

the Director may apply at any time to a Justice of the High Court for an order prohibiting advanced exploration, mining or mine production on the site.

Destruction,
etc., of
rehabilitation
works

(4) Every person who alters, destroys, removes or impairs any rehabilitation work made in accordance with Part IX or an accepted closure plan without the written consent of the Minister is guilty of an offence and on conviction is liable to a fine of not more than \$30,000.

Duty of
directors and
officers

(5) Every director or officer of a corporation that engages in a project under Part IX has a duty to take all reasonable care to ensure that the corporation complies with the requirements of that Part.

Offence

(6) Every person who has a duty under subsection (5) and who fails to carry out that duty is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Liability of
directors and
officers

(7) A director or officer of a corporation is liable to conviction under subsection (6) whether or not the corporation has been prosecuted and convicted.

Increase in
fine equal to
monetary
benefit

(8) The court that convicts a person of an offence under Part IX, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of monetary benefit acquired by, or that accrued to, the person as a result of the commission of the offence, notwithstanding the imposition of the maximum fine provided for that offence.

Offence
1989, c. 23

176a. Every owner of a mine and every licensee or permittee operating a pit or quarry under the *Aggregate Resources Act, 1989* who contravenes section 163, or who makes a report under that section that is, to the owner's, licensee's or operator's knowledge, false in any particular, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for each day on which the offence occurs or is continued.

80. Clause 177 (1) (a) of the said Act is repealed and the following substituted therefor:

(a) by a rehabilitation inspector.





81. Part XII of the said Act is repealed.

82. Section 190 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 48, section 2, is repealed and the following substituted therefor:

190.—(1) The Lieutenant Governor in Council may make Regulations regulations generally,

1. governing the opening, construction, maintenance and use of roads to, through or over mining claims, mining locations or lands sold or leased as mining lands or recorded as mining claims or locations under this Act or a predecessor thereof, and for the opening, construction or maintenance and use of ditches, aqueducts or raceways through, over or upon such claims, locations or lands for the conveying and passage of water for mining purposes;
2. prescribing the form of any application, notice, report, log, record, dispute, certificate, permit, statement or other document required, permitted or provided for, by or under this Act;
3. prescribing the amount of any fee required to be paid to the Minister, the Ministry, the Commissioner or a recorder by or under this Act;
4. prescribing the manner of staking and the size and form of mining claims and the time and manner of affixing tags in respect thereto;
5. prescribing the annual rental for a licence of occupation;
6. prescribing the information to be shown on a sketch or plan accompanying an application to record a mining claim;
7. prescribing, for the purposes of subsection 62 (1), the conditions on which permission may be given to mine, mill and refine mineral substance from an unpatented mining claim;
8. prescribing the annual units of assessment work to be performed by the holder of a mining claim;
9. prescribing, for the purposes of subsection 76 (2), locations, other than the office of the recorder, in which may be filed assessment work reports and prescribing the date reports in respect of specified types of assessment work shall be filed;
10. prescribing the types of work eligible for assessment work credits, the method of calculating and approv-

ing credits for work performed and the manner of distribution of credits to mining claims;

11. prescribing the manner in which prospecting and regional surveys performed before staking are eligible for assessment work credits;
12. prescribing the manner in which exploration work performed on patented mining claims may be allocated to contiguous unpatented mining claims;
13. prescribing the conditions on which an extension of time for the performing of and filing a report on assessment work may be allowed by a recorder;
14. prescribing the annual rental for the first year for a lease of a mining claim, the rate for each subsequent year and the annual rental for a renewal lease;
15. prescribing the rental rate for the mining rights only in respect of a mining claim;
16. prescribing the additional assessment work to be performed in respect of any excess area of a mining claim or in respect of excess average area of mining claims within a perimeter survey;
-  17. prescribing, for the purposes of subsection 83 (2), the conditions on which the holder of a mining claim may abandon part of the claim; 
18. prescribing the annual rental of a lease referred to in section 95;
19. prescribing the annual rental of a lease or renewal lease of surface rights referred to in section 97;
20. prescribing the methods and procedures to be followed in the surveying of mining claims;
21. prescribing the rate of interest to be imposed in the cases mentioned in subsections 196 (2) and 211 (2);
-  22. prescribing, for the purposes of subsection 198 (3), the size, form, manner and time of staking out and recording mining claims on land in which an interest is retained after surrender; 

23. prescribing, for the purposes of section 202, the amount of tax to be paid for each hectare;
24. prescribing classes of instruments and documents that may be filed through transmission by electronic means in such manner as is prescribed;
25. defining any word or expression for the purposes of this Act and the regulations that has not already been expressly defined in this Act;
26. prescribing anything that by this Act is to be or may be prescribed.

(2) The Lieutenant Governor in Council may make regulations relating to Part IX, Idem

1. prescribing the manner of preparing closure plans, their form and content, and the information, particulars, maps and plans to be included therein;
2. prescribing standards for rehabilitation;
3. prescribing standards for the protective measures to be taken in respect of the closure of a mine;
4. prescribing the form and manner and time of giving public notice;
5. prescribing the form and manner in which notice is to be given to the Director and to the proponent;
6. prescribing the manner of preparing the annual report to the Director required under subsection 161d (3);
7. prescribing the form of notice to be given under subsection 161d (5);
8. prescribing, for the purposes of subsection 161f (5), the form of a warrant to enter and inspect and, for the purposes of subsection 161f (6), the form of a warrant to enter and search;
9. prescribing, for the purposes of subsection 161g (1), the information to be contained in the notice to be given to the Director relating to a producing mine or to a mine from which production is temporarily suspended;

10. prescribing quantities of material extracted and other types of work that are to be classified as advanced exploration work;
11. prescribing time periods within which duties under Part IX shall be complied with;
12. prescribing anything that by Part IX is to be or may be prescribed.

Minister may
issue licence,
lease or
patent

(3) Notwithstanding anything in this Act, in special circumstances the Minister may, subject to the approval of the Lieutenant Governor in Council, issue a licence of occupation, lease or patent of any mining lands or mining rights on such terms and conditions as the Minister considers appropriate.

83. Section 192 of the said Act is repealed.

84.—(1) Subsection 193 (1) of the said Act is amended by striking out “Notwithstanding section 192” in the first line.

(2) Subsection 193 (2) of the said Act is repealed.

85. Section 194 of the said Act is amended by adding thereto the following subsections:

Registration
of order

(2) The land registrar of the land titles or registry division in which any lands or rights mentioned in a court order made under subsection (1) are situate shall, upon receipt of the order, register it and the order is absolute and conclusive proof of the vesting in the Crown of the lands or rights affected by the order and the vesting in the Crown is not open to attack in any court by reason of the omission of any act or thing leading up to the order repealing or avoiding the patent or lease.

Non-
application
of
R.S.O. 1980,
cc. 445, 230

(3) Upon registration of the court order in the land registry office, the *Registry Act* or the *Land Titles Act*, as the case may be, ceases to apply to the lands or rights affected by the order, and the land registrar shall note that fact in the register in red ink.

Opening
lands for
prospecting,
etc.

(4) The lands and mining rights vested in the Crown under this section are not open for prospecting, staking out or lease under this Act until a date fixed by the Deputy Minister, two weeks notice of which shall be published in *The Ontario Gazette*.

86. Section 195 of the said Act is repealed and the following substituted therefor:

195. Where a freehold or leasehold interest in mining lands or mining rights reverts, other than by transfer to the Crown, the land or rights may be dealt with as unpatented Crown land. Reversion to Crown

87.—(1) Subsection 196 (2) of the said Act is amended by striking out “rate of 6 per cent” in the eighteenth and nineteenth lines and inserting in lieu thereof “prescribed percentage rate”.

(2) Subsection 196 (8) of the said Act is repealed and the following substituted therefor:

(8) An application under subsection (2) shall be accompanied by the prescribed fee. Fee

88. Subsection 197 (5) of the said Act is amended by striking out “purchase or” in the fifth line.

89. Section 198 of the said Act is repealed and the following substituted therefor:


198.—(1) The owner, lessee or licensee of any mining lands or mining rights granted under this Act or any other Act may surrender such lands or mining rights to the Crown only upon such terms as are acceptable to the Minister, and thereupon the Minister may cause a notice of determination to be filed in the proper land registry office. Voluntary surrender of mining lands

(2) An owner, lessee or licensee who surrenders mining lands or mining rights under subsection (1) may file a notice in the prescribed form with the recorder indicating that such owner, lessee or licensee wishes to retain an interest in the lands or part of the lands thereof, in the form of unpatented mining claims. Retention as unpatented mining claims

(3) Where a notice has been filed under subsection (2), the owner, lessee or licensee shall stake out or cause to be staked out and recorded in such size, form, manner and time as is prescribed, the lands in which an interest is to be retained. Staking out and recording of lands

(4) Where mining claims have not been staked out and recorded under subsection (3) within the time prescribed, the recorder may extend the time for staking out and recording or may order that the mining lands or mining rights on which the staking out and recording is to be performed are surrendered and the recorder shall, in the case where an order of surrender is made, by registered letter mailed not later than the next day after the making of the order, notify the owner, lessee or licensee of the recorder's action and the reason therefor. Extension of time by recorder or order of surrender of lands

Prospecting,
etc., on
surrendered
lands

(5) Mining lands or mining rights surrendered to the Crown under subsection (1) and which are not recorded as unpatented mining claims under subsection (3) shall not be open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, notice of which shall be published in *The Ontario Gazette* at least two weeks prior thereto. 

90. Section 199 of the said Act is repealed and the following substituted therefor:

Lands
forfeited,
etc., to
Crown
R.S.O. 1980,
c. 95
1982, c. 4

199.—(1) Where mining lands or mining rights,

- (a) are forfeited to the Crown under the *Corporations Act* or the *Business Corporations Act*, 1982, or any predecessor thereof or are forfeited to the Crown for any other cause; or
- (b) have become the property of the Crown by reason of the person last seised thereof or entitled thereto having died intestate and without lawful heirs,

the Minister may cause to be registered in the proper land registry office a notice stating that forfeiture has been effected as mentioned in clause (a) or that the lands or mining rights have become the property of the Crown as mentioned in clause (b), as the case may be, and that by reason thereof the lands or mining rights and every interest therein are forfeited to and vested in, or have become the property of, the Crown, absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto, whether existing, arising or accruing before or after such forfeiture or becoming the property of the Crown, and, subject to subsection (2), such lands shall be dealt with under this Act.

Opening
forfeited,
etc., lands
for
prospecting,
etc.

(2) Mining lands or mining rights so forfeited or that have become the property of the Crown are not open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks notice of which shall be published in *The Ontario Gazette*.

91. Section 200 of the said Act and the preceding heading are repealed and the following substituted therefor:

ANNULMENT OF FORFEITURE OR TERMINATION OF LEASE



Annulment
of forfeiture,
etc.

200.—(1) The Lieutenant Governor in Council, upon the recommendation of the Minister, may by order revoke, cancel or annul the forfeiture of any mining lands or mining rights under this Act or revoke, cancel or annul the termination of

any lease of mining lands under this Act or relieve from forfeiture any unpatented mining claims on such terms and conditions as the Minister considers appropriate.

(2) Where an order under subsection (1) concerns unpatented mining claims, such order shall be filed in the office of the mining recorder. Filing order
in recorder's
office

(3) Where an order under subsection (1) concerns leases or freehold patents, the Deputy Minister shall cause the order to be registered in the proper land registry office and thereupon the mining lands or mining rights revert in the owner or lessee of the mining lands or mining rights at the time of forfeiture or termination, his or her heirs, successors or assigns, subject to any lien, mortgage or charge entered or registered prior to the forfeiture or termination and still outstanding. Registering
order in land
registry office

(4) Where application is made for an order under subsection (1), the Minister may direct the mining lands or mining rights described in the application to be withdrawn from prospecting, staking out, sale or lease until the disposition of the application. Withdrawal
of lands from
prospecting,
etc.

(5) The Minister may direct an application for an order under subsection (1) to be accompanied by the prescribed fee. Fee

92. The heading preceding section 201 of the said Act is struck out and the following substituted therefor:

MINING LAND TAX

93. Section 201 of the said Act is repealed and the following substituted therefor:

201. In this Part,

Definitions

“municipality” means a city, town, village, township or improvement district;

“tax” means a tax under this Part.

94. Section 202 of the said Act is repealed and the following substituted therefor:

202. There shall be paid to the Crown in each year a tax in the prescribed amount for each hectare on any lands or mining rights to which this Part applies. Amount of
tax

95. Section 203 of the said Act is amended by striking out “acreage” in the first line.

96.—(1) Subsection 204 (1) of the said Act is amended by striking out “acreage” in the twenty-third line.

(2) Subsection 204 (2) of the said Act is amended by striking out “acreage” in the first line.

97. Clause 205 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) land has been subdivided,
 - (i) by a registered plan of subdivision, or
 - (ii) by a reference plan into parts for city, town, village or summer resort purposes,
- and there is no severance of the surface and mining rights.

98. Section 207 of the said Act is amended by striking out “acreage” in the third line.

99. Section 208 of the said Act is amended by striking out “acreage” in the fourth line.

100. Section 209 of the said Act is amended by striking out “acreage” in the second line.

101. Subsection 210 (1) of the said Act is amended by striking out “acreage” in the fourth line and in the eighth line.

102.—(1) Subsection 211 (1) of the said Act is amended by striking out “acreage” in the first line.

(2) Subsection 211 (2) of the said Act is repealed and the following substituted therefor:

Fee

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

103.—(1) Subsection 212 (1) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 48, section 3, is further amended by striking out “acreage” in the fourth line and by striking out “certified mail” in the sixth line and inserting in lieu thereof “mail or delivered by courier service”.

(2) Subsection 212 (2) of the said Act is amended by striking out “acreage” in the sixth line.

(3) Subsection 212 (3) of the said Act is amended by striking out “acreage” in the first line.

104. Section 214 of the said Act is repealed.

105.—(1) Subsection 215 (1) of the said Act is amended by striking out “acreage” in the first line.

(2) Subsection 215 (2) of the said Act is amended by striking out “acreage” in the second line.

106. Section 217 of the said Act is amended by striking out “acreage” in the second line.

107. The Schedule to the said Act is repealed.

108.—(1) Every prospector’s licence issued or renewed under the *Mining Act*, that is in good standing on the day this section comes into force, expires on the date set out on the licence or renewal thereof, and thereafter, in the case of a licence held by a natural person, may be renewed under section 22 of the *Mining Act*, as amended by section 12 of this Act.

Prospector’s
licence
R.S.O. 1980,
c. 268

(2) The expiry provision in subsection (1) does not apply to a prospector’s licence that was issued or renewed as a lifetime licence.

Idem

(3) Where, before the 24th day of October, 1989,

Dispute or
court
proceeding

(a) a dispute has been filed under section 56 of the *Mining Act*; or

(b) a proceeding has been commenced in the Supreme Court to declare forfeited or void or to cancel or annul any Crown patent issued for mining lands, mining claims or mining rights,

the provisions of the *Mining Act*, as they existed before the coming into force of this Act, continue to apply to the dispute or proceeding until finally disposed of.

(4) Subsections 56 (7) and (8) of the *Mining Act*, as enacted by section 34 of this Act, apply to any re-staking by or on behalf of a transferee that has been commenced before, on or after the 24th day of October, 1989, unless, before that day, the matter in dispute has been finally disposed of under the *Mining Act*.

Re-staking

(5) Section 96 of the *Mining Act*, as it read before its re-enactment by section 61 of this Act, continues in force and

Freehold
patent

applies in respect of any application for a patent made under that section before the 24th day of October, 1989.



Relief from
forfeiture by
Mining and
Lands
Commissioner

109.—(1) Where forfeiture occurs under clause 85 (1) (c), (d) or (e) of the *Mining Act* as those clauses read before the coming into force of section 52 of this Act or under clause 85 (1) (c) of the *Mining Act*, as re-enacted by section 52 of this Act, and where an application is made to the Mining and Lands Commissioner within six months of the forfeiture, the Commissioner may make an order on such terms and conditions as the Commissioner considers just relieving the claim from forfeiture and extending the time for performing or reporting the work, or both, but no such application may be made to the Commissioner after the expiration of eight months from the day section 52 of this Act comes into force.

Performance
of assessment
work or
application
for lease

(2) Where, on the day section 76 of the *Mining Act*, as re-enacted by section 46 of this Act, comes into force, 200 days of assessment work have been performed and recorded by the holder of a mining claim under section 76 of the *Mining Act* as it read before its re-enactment by section 46 of this Act, the holder of the mining claim shall,

- (a) perform and file such annual units of assessment work as are prescribed under section 76 of the *Mining Act*, as re-enacted by section 46 of this Act; or
- (b) apply and pay for a lease of the claim within the time set out in subsection 94 (2) of the *Mining Act*, as it read before its re-enactment by section 59 of this Act, or, where applicable, within the time set out in an order of the Mining and Lands Commissioner under section 86 of the *Mining Act* as it read before its re-enactment by section 53 of this Act.

Rental rate,
subsisting
leases

110.—(1) A subsisting lease that has been issued or renewed under section 94, 95 or 97 or subsection 190 (2) of the *Mining Act*, as those provisions read before the day sections 59, 60, 62 and 82 of this Act come into force, shall continue to bear the existing rental rate until the expiration of five years from that day.


Certain leases
issued after
ss. 59, 60,
62, 82, in
force

(2) Where a lease applied for before the 24th day of October, 1989 is issued after the day sections 59, 60, 62 and 82 of this Act come into force, the lease shall bear the rental rate provided for by the *Mining Act*, as that Act read before the day sections 59, 60, 62 and 82 of this Act come into force, until the expiration of five years from the day those sections come into force.

(3) Where a lease to which subsection (1) or (2) applies is renewed under section 94 of the *Mining Act*, as amended by section 59 of this Act, the lease shall, until the expiration of five years from the day sections 59, 60, 62 and 82 of this Act come into force, bear the rental rate set out in subsection 94 (8) of the *Mining Act*, as that section read before its re-enactment by section 59 of this Act. Renewal
leases

(4) Notwithstanding the provisions of a lease, after the expiration of five years from the day sections 59, 60, 62 and 82 of this Act come into force, every lease shall bear the rental rate set out in the *Mining Act* as amended by this Act. When new
rental rates
in Act prevail

111.—(1) This Act, except subsection 34 (3) and section 51, comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

(2) Subsection 34 (3) and section 51 come into force on the day this Act receives Royal Assent. Idem


112. The short title of this Act is the *Mining Amendment Act, 1989*. Short title

Bill 71

(Chapter 62
Statutes of Ontario, 1989)

An Act to amend the Mining Act

The Hon. H. O'Neil
Minister of Mines



<i>1st Reading</i>	October 24th, 1989
<i>2nd Reading</i>	November 27th, 1989
<i>3rd Reading</i>	December 6th, 1989
<i>Royal Assent</i>	December 6th, 1989

Bill 71

1989

An Act to amend the Mining Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Paragraph 1 of section 1 of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

1. “anniversary date”, when referring to a mining claim, means the date that occurs at annual intervals after the recording of a mining claim, or such other date as results from the application of subsection 79 (2).

(2) Paragraphs 4 and 5 of the said section 1 are repealed and the following substituted therefor:

4. “Crown land” does not include,
 - i. land, the surface rights, mining rights or the mining and surface rights of which are under lease or licence of occupation from the Crown,
 - ii. land in the actual use or occupation of the Crown, the Crown in right of Canada, or of a department of the Government of Canada or a ministry of the Government of Ontario,
 - iii. land the use of which is withdrawn or set apart or appropriated for a public purpose, or
 - iv. land held by a ministry of the Government of Ontario;
5. “Deputy Minister” means the Deputy Minister of Mines.

(3) Paragraph 6 of the said section 1 is repealed.

(4) Paragraph 7 of the said section 1 is repealed and the following substituted therefor:

7. “holder”, when referring to the holder of an unpatented mining claim, a boring permit or a licence of occupation issued under this Act, means the holder of record.

(5) Paragraph 9 of the said section 1 is repealed and the following substituted therefor:

9. “inspector” includes a geologist on the staff of the Ministry and any other officer or agent designated by the Minister to carry out an inspection or investigation of the mining industry.

(6) Paragraph 11 of the said section 1 is repealed and the following substituted therefor:

11. “licensee” means a person holding a prospector’s licence issued under this Act or a renewal thereof.

(7) Paragraphs 14, 15 and 16 of the said section 1 are repealed and the following substituted therefor:

14. “mine”, when used as a noun, means any opening or excavation in, or working of the ground, for the purpose of winning any mineral or mineral bearing substance, and all ways, works, machinery, plant, buildings and premises below or above the ground belonging to or used in connection with such activity, and any roasting or smelting furnace, concentrator, mill, work or place used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any of such substances and includes mines that have been temporarily suspended, rendered inactive, closed out or abandoned as well as lands where tailings, or wasterock, or both, or any other prescribed substances from any opening or excavation or working of the ground have been deposited;
15. “mine”, when used as a verb, means the performance of any work in or about a mine, as defined in paragraph 14;
16. “minerals” means all naturally occurring metallic and non-metallic minerals, including natural gas, petroleum, coal, salt, quarry and pit material, gold,

silver and all rare and precious metals, but does not include sand, gravel and peat;

- 16a. “mining claim” means a parcel of land, including land under water, that has been staked and recorded in accordance with this Act and the regulations.

(8) Paragraphs 18, 19, 20, 21 and 22 of the said section 1 are repealed and the following substituted therefor:

18. “mining rights” means the right to minerals on, in or under any land;
19. “Minister” means the Minister of Mines, except that in Parts IV and IX-A “Minister” means the Minister of Natural Resources;
20. “Ministry” means the Ministry of the Minister;
21. “owner”, when used in Parts IX, IX-B and XI, includes every person, being the immediate proprietor, lessee or occupier of a mine, or a part thereof, or of any land located, patented or leased as mining land, and includes an agent, or a person designated by the owner or agent as responsible for the control, management and direction of a mine, or a part thereof, but does not include a person receiving merely a royalty from a mine, or mining lands, or the owner of the surface rights only;
22. “patent” means a grant from the Crown in fee simple or for a less estate made under the Great Seal, and includes leasehold patents and freehold patents, but in sections 4, 28, 97, 100 to 108, 190, 194, 197 and 204, the meaning is limited to freehold patents.

(9) Paragraph 23 of the said section 1 is repealed and the following substituted therefor:

23. “prescribed” means prescribed by the regulations;
- 23a. “prospecting” means the investigating of, or searching for, minerals.

(10) Paragraphs 26 and 29 of the said section 1 are repealed.

2. The said Act is amended by adding thereto the following section:

Purpose of
Act

1a. The purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources and to minimize adverse effects on the environment through rehabilitation of mining lands in Ontario.

3. Section 3 of the said Act is repealed.

4. Section 4 of the said Act is amended by adding thereto the following subsections:

Immunity for
acts done in
good faith

(3) No action or other proceeding for damages shall be instituted against the Minister, the Deputy Minister or any officer or employee of the Ministry or any one acting under the authority of the Minister or Deputy Minister for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty.

Crown
liability
R.S.O. 1980,
c. 393

(4) Subsection (3) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (3) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (3) had not been enacted.

Delegation of
Minister's
powers, etc.

(5) Where under this Act a power or duty is granted to or vested in the Minister, the Minister may in writing delegate that power or duty to the Deputy Minister or to any officer or employee of the Ministry, subject to such limitations, conditions and requirements as the Minister sets out in the delegation.

Employees
authorized to
take
affidavits

(6) The Minister may empower such employees of the Ministry as the Minister designates to administer oaths and take and receive affidavits, declarations and affirmations authorized by law, for the purposes of or incidental to the administration or enforcement of this Act, and every person so authorized has, in respect of such oath, affidavit, declaration or affidavit, all the powers of a commissioner for taking affidavits under the *Commissioners for taking Affidavits Act*.

R.S.O. 1980,
c. 75

5.—(1) Subsection 6 (1) of the said Act is repealed and the following substituted therefor:

Mining
recorder

(1) The Minister may appoint an employee of the Ministry as mining recorder for each mining division.

(2) Subsection 6 (3) of the said Act is repealed.

6. Section 7 of the said Act is amended by inserting after “such” in the first line “record”.

7.—(1) Section 9 of the said Act is amended by striking out “any of such books” in the first and second lines and inserting in lieu thereof “a record book”.

(2) The said section 9 is further amended by adding thereto the following subsections:

(2) Where a copy of or extract from an entry in a record book or any document filed in the recorder’s office is recorded electronically or on a magnetic medium, any writing that,

Computer
printout,
etc.,
admissible
evidence

- (a) represents the entry in the record book or the filed document;
- (b) is generated or produced from the electronic record or magnetic medium; and
- (c) is in a readily understandable form,

is admissible in evidence to the same extent as the original book or filed document.

(3) Where a record in a recorder’s office is recorded electronically or on a magnetic medium and there is no original written record that corresponds to the record, any writing that,

Idem

- (a) represents the record;
- (b) is generated by or produced from the electronic record or magnetic medium; and
- (c) is in a readily understandable form,

is admissible in evidence to the same extent as the record would be if it were an original written record.

8.—(1) Subsection 12 (1) of the said Act is amended by striking out “and any such purchase or interest is void” in the fourth and fifth lines.

(2) Subsection 12 (2) of the said Act is repealed and the following substituted therefor:

(2) Where the Deputy Minister is satisfied that an officer has in good faith acquired an interest referred to in subsection

Waiver by
Deputy
Minister

(1) for other than mining purposes, the Deputy Minister may in writing waive the application of subsection (1) to the officer.

Penalty

(3) Any officer contravening subsection (1) forfeits his or her office.

9. Subsection 18 (1) of the said Act is repealed and the following substituted therefor:

Licence
required

(1) No person shall prospect on Crown lands or stake out, record or apply to record the staking of a mining claim unless the person is the holder of a prospector's licence issued under this Act.

10. Section 19 of the said Act is repealed and the following substituted therefor:

Who may
receive
licence

19.—(1) Any natural person who is of the age of eighteen years or over is entitled to obtain a prospector's licence upon application therefor made in the prescribed form and upon payment of the prescribed fee.

Date and
term of
licence

(2) A licence shall be dated on the day of its issue and expires at midnight on the day of the fifth anniversary of the licensee's birth date that follows the issue of the licence.

Not valid
unless signed

(3) A licence is not valid unless it is signed by the holder thereof in the space provided on the licence.

Licence not
transferrable

(4) A licence is not transferrable.

Who may
issue

(5) A licence may be issued by any recorder.

Service

(6) Any notice or document relating to a licensee is sufficiently served upon the licensee if delivered or sent by prepaid first class mail to the address shown on the application for the prospector's licence or to the address given under subsection (8), if applicable.

Idem

(7) Where service is made by prepaid first class mail under subsection (6) it shall be deemed to have been made on the fifth day after the day of mailing.

Notice of
change of
address

(8) A licensee shall notify, in the prescribed form, the recorder of any change in the address of the licensee.

11. Section 21 of the said Act is repealed.

12.—(1) Subsection 22 (1) of the said Act is repealed and the following substituted therefor:

(1) A licensee is entitled to a renewal of his or her licence upon making application therefor in the prescribed form and paying the prescribed fee within sixty days of its expiration.

Renewal of licence

(1a) Notice of the expiration of a licence shall be given by the recorder to the holder of the licence not later than sixty days before the expiry date.

Notice of expiration of licence

(2) Subsections 22 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) A licence may be renewed by any recorder.

Who may renew

(3) The renewal shall bear date on the day following the expiration of the licence or renewal of licence of which it is the renewal and shall take effect immediately upon the expiration of that licence, or renewal thereof, as the case may be.

Date and term of renewal

(3) Subsection 22 (4) of the said Act is amended by adding at the end thereof “and shall expire at 12 o’clock midnight on the day that is the fifth anniversary of the licensee’s birth date following the effective date of the renewal”.

(4) Subsection 22 (5) of the said Act is repealed and the following substituted therefor:

(5) The Minister shall renew without fee the licence of a person who has held a licence continuously for twenty-five years, and the licence shall remain in good standing during the lifetime of the licensee.

Lifetime renewal by Minister

(6) The Minister may, at his or her discretion, renew the licence of a person without fee and order that the licence remain in good standing during the lifetime of the licensee.

Idem

13. Subsection 24 (1) of the said Act is repealed and the following substituted therefor:

(1) No person shall apply for or hold more than one prospector’s licence.

Not more than one licence

14.—(1) Subsection 27 (5) of the said Act is repealed and the following substituted therefor:

(5) While a licence is suspended under subsection (3), the licensee may renew the licence but the licensee may not stake out or apply to record a mining claim.

Rights of licensee under suspension

Where holder
of mining
claim
contravenes
Act

(5a) Where the recorder finds, after a hearing, that a holder of a mining claim has contravened any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the recorder, order that such holder may not acquire an unpatented mining claim or interest therein through transfer or obtain an extension of time in which to perform work or to apply for lease on any unpatented mining claim recorded in the name of the holder.

Cancellation
of mining
claims

(5b) Where the Commissioner finds, after a hearing, that a holder of a mining claim has been guilty of a wilful contravention of any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the Commissioner, declare any mining claims of the holder to be cancelled and thereupon all rights of the holder in or to mining claim lands cease.

Order
pending
hearing

(5c) Pending the holding of a hearing on any matter under this section, the Commissioner or the recorder, as the case may be, before whom the hearing will be held, may order that any mining claim of the licensee or holder whose conduct is in question shall not, before the conclusion of the hearing and final disposition of the matter, be transferred to any other person.

Prohibition
against
staking out
claims, etc.

(5d) Where mining claims are cancelled under subsection (5b), the former holder of the mining claims may not stake out or apply for a mining claim or acquire an unpatented mining claim or interest therein through transfer for such period of time as the Minister determines, and the Minister shall notify the former holder of the period of time so determined.

(2) Subsection 27 (6) of the said Act is repealed and the following substituted therefor:

Appeal

(6) A finding by the Commissioner that a licensee or holder of a mining claim has wilfully contravened this Act or the regulations or by a recorder that a licensee or holder of a mining claim has contravened this Act or the regulations, as the case may be, may be appealed in like manner as any decision of the Commissioner or recorder, respectively, and the Minister shall give effect to the decision on the appeal.

15. Section 29 of the said Act is amended by striking out “licensee” in the fourth line and inserting in lieu thereof “person”.

16.—(1) Clause 30 (b) of the said Act is repealed and the following substituted therefor:

- (b) upon any land laid out on a registered plan of subdivision.

(2) Clause 30 (d) of the said Act is repealed.

17.—(1) Clause 31 (b) of the said Act is repealed and the following substituted therefor:

- (b) for which an application brought in good faith is pending in the Ministry of Natural Resources under the *Public Lands Act* or otherwise, and the applicant may acquire the minerals; or

R.S.O. 1980.
c. 413

(2) Clause 31 (c) of the said Act is amended by inserting after “Ministry” in the third line “of Natural Resources”.

(3) Clause 31 (d) of the said Act is amended by striking out “and Communications” in the second line.

18. Subsection 33 (1) of the said Act is amended by striking out “or company” in the second and third lines.

19. Section 34 of the said Act is amended by striking out “licensee” in the fifth line and inserting in lieu thereof “holder of the mining claim”.

20. Section 35 of the said Act is amended by striking out “and Communications” in the third line.

21.—(1) Subsection 36 (1) of the said Act is amended by striking out “or an officer appointed under this Act and designated by the Minister” in the first and second lines.

(2) Subsection 36 (2) of the said Act is repealed and the following substituted therefor:

- (2) Where the Minister makes an order under subsection (1), the Minister shall, within twenty-four hours of the date of the order, mail a copy of the order to the recorder.

Copy of
order sent to
recorder

(3) Subsection 36 (4) of the said Act is repealed and the following substituted therefor:

- (4) Lands, mining rights or surface rights withdrawn under this section, until re-opened by the Minister, shall remain withdrawn and shall not be prospected or staked out.

Lands
withdrawn
not to be
prospect-
ed, etc.

22. Section 38 of the said Act is repealed.

23. Section 39 of the said Act is repealed and the following substituted therefor:

Permit under
R.S.O. 1980,
cc. 173, 413

39. Before beginning or carrying on any prescribed assessment work on a mining claim, the holder thereof, in addition to any other requirement, shall obtain a written permit entitling the holder to do so as provided in the *Forest Fires Prevention Act* or the *Public Lands Act*.

24. Section 40 of the said Act is repealed and the following substituted therefor:

Manner of
staking
mining claim

40. A mining claim shall be staked in such size, form and manner as is prescribed and may be staked on any day.

25. Section 42 of the said Act is repealed.

26.—(1) Subsections 43 (1), (2) and (3) of the said Act are repealed.

(2) Subsection 43 (5) of the said Act is amended by striking out “and Communications” in the third line.

27.—(1) Subsection 44 (1) of the said Act is repealed and the following substituted therefor:

Rates for
licences of
occupation

(1) Notwithstanding the provisions of a licence of occupation, there shall be paid, in advance, the prescribed annual rental for the licence of occupation.

(2) Subsection 44 (6) of the said Act is repealed and the following substituted therefor:

Lease may
be issued
under s. 94

(6) The holder of a licence of occupation, upon application in writing therefor and upon the surrender of the licence of occupation, may be issued a lease under section 94 and the rental for each year of the term thereof shall be that prescribed for the purposes of section 94 for years subsequent to the first year of a term.

28. Sections 45, 46, 47 and 48 of the said Act are repealed.

29. Section 50 of the said Act is amended by adding thereto the following subsection:

Deemed
substantial
compliance

(2) The staking out of a mining claim shall be deemed to be in substantial compliance with the requirements of this Act and the regulations even if there is a failure to comply with a number of specific staking requirements if,

- (a) the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity; and
- (b) it is apparent that an attempt has been made in good faith by the licensee to comply with the requirements of this Act and the regulations.

30. Section 51 of the said Act is repealed and the following substituted therefor:

51.—(1) A licensee who has staked out a mining claim shall make an application in the prescribed form to the recorder accompanied by the prescribed fee and a sketch or plan showing the prescribed information to record the claim not later than thirty-one days after the day on which staking was completed.

Application
to record
mining claim

(2) Priority of completion of staking shall prevail where two or more licensees make application to record the staking of all or a part of the same lands.

Priority of
completion
prevails

(3) Where one of the applications made by two or more licensees to record the staking of a mining claim is entitled to priority under subsection (2), the recorder shall cancel the other application or applications and shall by registered letter mailed not later than the following day notify the other licensee or licensees of the recorder's action and the reason therefor.

Notice to
other licensee
or licensees

31. Section 52 of the said Act is repealed.

32.—(1) Subsection 54 (1) of the said Act is amended by striking out “unless a prior application is already recorded and subsisting for the same, or for any substantial part of the same lands or mining rights” in the fourth, fifth and sixth lines.

(2) Subsection 54 (2) of the said Act is amended by inserting after “claim” in the fourth line “that has priority under subsection 51 (2)” and by striking out “licensee” in the twelfth line and inserting in lieu thereof “person”.

(3) Subsections 54 (5), (6), (7) and (8) of the said Act are repealed.

(4) Subsection 54 (9) of the said Act is repealed and the following substituted therefor:

(9) There shall be added to each claim number the prefix allotted to the mining division in which the claim is situate.

Division
prefix added

33. Section 55 of the said Act is repealed and the following substituted therefor:

Metal tags **55.—**(1) Metal tags and duplicate tags shall be provided by the Ministry on payment of the prescribed fee and may be used by any licensee in staking out claims in the prescribed manner and within the prescribed time.

Transfer of tags (2) Metal tags and duplicate tags do not expire but may not be re-used.

34.—(1) Subsection 56 (1) of the said Act is amended by inserting after “by” in the first line “a detailed statement of claim and an” and by striking out “licensee” in the third line and in the fifth line and inserting in lieu thereof in each instance “person”.

(2) Subsection 56 (2) of the said Act is repealed and the following substituted therefor:

Copy to be sent to recorded holder (2) A copy of the dispute, statement of claim and affidavit shall be left by the disputant with the recorder who shall, not later than the next day after the filing of the dispute, transmit the copy by registered mail to the recorded holder or holders of the mining claim affected thereby, and, if the copy is not left, the recorder may refuse to file or note the dispute or may collect from the disputant the prescribed fee per page for making the copy.

(3) Subsection 56 (5) of the said Act is repealed and the following substituted therefor:

When not to be received (5) A dispute shall not be received or entered against a claim,

- (a) after one year from the recording of the claim;
- (b) after the first prescribed unit of assessment work has been performed and filed and, where necessary, approved; or
- (c) except by leave of the Commissioner,
 - (i) after the validity of the claim has been adjudicated upon by the recorder or by the Commissioner, or
 - (ii) after it has been on record for sixty days and has already had a dispute entered against it.

(5a) Where a dispute is entered against a claim after the first prescribed unit of assessment work has been performed and filed but before the assessment work has been approved, where approval is necessary, the dispute shall be deemed to have been resolved in favour of the holder or holders of the claim if the assessment work is subsequently approved and the note of the dispute entered on the record of the claim shall be struck out by the recorder who shall by registered letter mailed not later than the following day notify the disputant of the recorder's action and the reason therefor.

Where
assessment
work
subsequently
approved

(4) Section 56 of the said Act is amended by adding thereto the following subsections:

(7) Notwithstanding clause 28 (c) and subsection 84 (1), where a dispute has not been filed against a mining claim a transferee who has acquired the claim in good faith may re-stake or cause to be re-staked the claim or any part thereof at any time and, upon filing with the recorder a notice in the prescribed form of the re-staking, the recorder shall, upon notice to all persons having a recorded interest in the original claim, order that the re-staked claim shall be deemed to have been recorded on the date of the recording of the original claim or any part thereof that has been re-staked.

Re-staking
claim

(8) In an order made under subsection (7), the recorder shall provide that orders, assessment work reports, instruments or other notations which have been entered against the original claim be entered in the record book in respect of the re-staked claim, and may include in the order such provisions as the recorder considers necessary to effect such entry in the record book of the re-staked claim.

Entry of
orders, etc.,
against re-
staked claim

35. Sections 57, 58 and 59 of the said Act are repealed.

36.—(1) Subsection 59a (1) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 48, section 1, is repealed and the following substituted therefor:

(1) A recorder may by order relieve an unpatented mining claim that is subject to forfeiture as a result of an administrative error on the part of the Crown from the forfeiture.

Relief from
forfeiture

(2) Subsection 59a (4) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 48, section 1, is repealed and the following substituted therefor:

(4) An order under subsection (1) or (3) may grant an extension of time for performing and reporting any work required to be performed or for applying and paying for a

Extension of
time

lease in respect of the claim or provide for the payment of any fees in respect of the claim.

37. Subsections 60 (1), (2), (3) and (4) of the said Act are repealed and the following substituted therefor:

Rights in
claim

(1) The staking out or the filing of an application for or the recording of a mining claim, or the acquisition of any right or interest in a mining claim by any person or all or any of such acts, does not confer upon that person,

(a) any right, title, interest or claim in or to the mining claim other than the right to proceed as in this Act provided to perform the prescribed assessment work or to obtain a lease from the Crown and, prior to the performance, filing and approval of the first prescribed unit of assessment work, the person is merely a licensee of the Crown and after that period and until he or she obtains a lease the person is a tenant at will of the Crown in respect of the mining claim; or

(b) any right to take, remove or otherwise dispose of any minerals found in, upon or under the mining claim.

38. Section 62 of the said Act is repealed and the following substituted therefor:

Permission to
test mineral
content

62.—(1) The Minister may give written permission, subject to such conditions as are prescribed, to mine, mill and refine mineral bearing substance from an unpatented mining claim for the purpose of testing mineral content.

Conditions

(2) Permission granted under subsection (1) shall be for a specified time and shall cover a specified quantity of mineral bearing substance.

Sale of end
product

(3) The end product of mining, milling and refining permitted under subsection (1), except as provided in subsection (4), shall not be sold or otherwise disposed of until the mining claim from which the minerals were taken is leased under this Act.

Disposition
of proceeds

(4) Subsection (3) does not apply where the Minister gives written permission for the sale or disposition and where the Minister does so, the sale or disposition shall be in accordance with such terms as the Minister may impose.

39. Section 63 of the said Act is repealed.

40. Subsection 64 (2) of the said Act is amended by adding at the commencement thereof “Unless ordered otherwise by the Minister”.

41. Section 70 of the said Act is amended by striking out “may” in the second line and inserting in lieu thereof “shall”.

42.—(1) Section 71 of the said Act is amended by striking out “nor shall any such instrument be recorded without an affidavit in the prescribed form, attached to or endorsed thereon, made by a subscribing witness to the instrument” in the eighth, ninth, tenth and eleventh lines.

(2) The said section 71 is further amended by adding thereto the following subsections:

(2) Any such instrument shall not be recorded unless an affidavit in the prescribed form, attached thereto or endorsed thereon, is made by a subscribing witness to the instrument. Affidavit of execution

(3) Subsection (2) does not apply to the execution of an instrument by a corporation under its seal. Corporations

43. Subsection 74 (3) of the said Act is repealed.

44.—(1) Subsection 75 (3) of the said Act is repealed and the following substituted therefor:

(3) The certificate is of no effect and does not constitute notice to any person of the proceeding until it is filed. Not to constitute notice until filed

(2) Subsection 75 (6) of the said Act is amended by striking out “upon the latter becoming, if he is not before, a licensee” in the fifteenth and sixteenth lines.

(3) Subsection 75 (7) of the said Act is amended by striking out “a fee of \$1, which” in the second and third lines and inserting in lieu thereof “any required fee and such”.

45. The heading preceding section 76 of the said Act is struck out and the following substituted therefor:

ASSESSMENT WORK

46. Section 76 of the said Act is repealed and the following substituted therefor:

76.—(1) The holder of a mining claim shall, following the recording of the claim, perform such annual units of assessment work as are prescribed. Assessment work

Report

(2) Subject to subsection (3), every mining claim holder shall, not later than the anniversary date, file in the office of the recorder or such other location as is prescribed a report in the prescribed form of the assessment work done for the purpose of complying with subsection (1), together with such other information as may be prescribed.

Idem

(3) The report mentioned in subsection (2) shall, in respect of any specified type of assessment work, be filed not later than such date earlier than the anniversary date as may be prescribed for that type of assessment work.

Credits
measured in
dollars spent

(4) For the purpose of subsection (1), assessment work credits shall be measured in terms of dollars spent.

47. Sections 77 and 78 of the said Act are repealed and the following substituted therefor:

Types of
work eligible
for credits,
etc.

77.—(1) The types of work that are eligible for assessment work credits, the method of calculating and approving the credits for work performed and the distribution of credits for work performed to mining claims shall be determined in such manner as is prescribed.

Prospecting
and regional
surveys

(2) Prospecting and regional surveys performed on Crown lands before the staking of a mining claim are eligible for assessment work credits in such manner as is prescribed.

Work on
patented
mining claims

(3) Exploration work performed on patented mining claims may be allocated as assessment work to contiguous unpatented mining claims in the prescribed manner.

48. Section 79 of the said Act is repealed and the following substituted therefor:

Computing
time for
performance
of assessment
work

79.—(1) In computing the time within which work upon a mining claim is required to be performed or within which application and payment for a lease may be made,

R.S.O. 1980,
cc. 173, 413

- (a) if a permit under the *Forest Fires Prevention Act* or the *Public Lands Act* that is necessary for the beginning or carrying on of work under this Act is refused or the performance of such work is prohibited under those Acts or any other Act, or the holder defers the start of work or is delayed in its performance at the request, or by the actions, of the Crown, the time during which such refusal, prohibition, deferment or delay subsists, if the holder provides the Commissioner with satisfactory evidence of such refusal, prohibition, deferment or delay; or

- (b) the time during which proceedings in respect of the mining claim are pending before the Supreme Court, the Commissioner or the recorder, where the Commissioner is satisfied that any delay in settling the matter is not the fault of the holder,

shall be excluded, and the Commissioner may make an order fixing the date or dates by which the next or any prescribed units of work shall be performed and reported or by which an application and payment for lease may be made.

(2) Where the time for doing something under this Act is excluded, the next anniversary date after the exclusion in respect of the mining claim involved shall be deemed to be the date that falls after the anniversary date that would have occurred, except for this provision, by the number of days that equals the number of days of the exclusion, and all subsequent anniversary dates shall be adjusted accordingly.

Anniversary
date changed

(3) Notwithstanding anything in this Act, where in the opinion of the Minister special circumstances exist, the Minister may exclude the time within which work upon a mining claim is required to be performed or within which application and payment for lease may be made, and may by order fix the anniversary date or dates by which the next or any subsequent periods of work shall be performed and reported or by which application and payment for lease may be made.

Special
circumstances

49. Section 80 of the said Act is repealed.

50. Section 83 of the said Act is repealed and the following substituted therefor:

83.—(1) The holder of a mining claim may abandon the claim at any time by filing a notice of abandonment in the prescribed form with the recorder.

Right of
mining claim
holder to
abandon
claim

(2) The holder of a mining claim may abandon any part of the claim at any time on such conditions as are prescribed, by filing a notice of partial abandonment in the prescribed form with the recorder.

Abandonment
of part of
claim

(3) The recorder shall enter a note of the abandonment upon the record of the claim with the date of the receipt of the notice and shall forthwith post up in the recorder's office a notice of the abandonment with a sketch of the claim or part thereof to be abandoned.

Notice of
abandonment

(4) Where part of a claim has been abandoned under subsection (2), the recorder shall issue an order directing the

Order by
recorder

moving of posts or tags, the erection of new posts and the identification of new boundary lines and stating the time within which the work is to be completed.

Compliance
with order

(5) Where an order is issued under subsection (4), the mining claim holder affected shall file an affidavit in the prescribed form within the time set out in the order and a copy of the affidavit, marked with the date of the posting shall be posted by the recorder in the recorder's office.

Extension of
time by
recorder or
order of
abandonment

(6) Where the work set out in an order under subsection (4) has not been completed within the time set out in the order, the recorder may extend the time for completing the work or may order that the portion of the claim on which the work was to be done is abandoned and shall, in the case where an order of abandonment is made, by registered letter mailed not later than the next day after the making of the order, notify the holder of the recorder's action and the reason therefor, and a copy of the order shall be posted by the recorder in the recorder's office.

When claim
open for
staking

(7) Where part of a mining claim is abandoned under subsection (2) and an order of the recorder is made under subsection (6), the mining claim abandoned is open for staking from 9 o'clock in the forenoon of the eleventh day after the posting of the order of the recorder made under subsection (6).

Idem.
abandonment
of whole
claim

(8) Every mining claim abandoned under subsection (1) is open for staking from 9 o'clock in the forenoon of the eleventh day after the notice of abandonment is filed.

Idem.
abandonment
of part of
claim

(9) Where part of a mining claim is abandoned under subsection (2) and no order is made by the recorder under subsection (6), that part of the claim is open for staking from 9 o'clock in the forenoon of the eleventh day after the posting of the affidavit required under subsection (5).

51. Section 84 of the said Act is repealed and the following substituted therefor:

Deemed
abandonment
of claim

84.—(1) Non-compliance by the licensee or holder of a mining claim with any requirement of this Act or the regulations as to the time or manner of the staking out and recording of a mining claim or with a direction of the recorder in regard thereto, within the time limited therefor, shall be deemed to be an abandonment, and the claim shall, without any declaration, entry or act on the part of the Crown or by any officer, unless otherwise ordered by the Commissioner, be forthwith opened to prospecting and staking out.

(2) Notwithstanding subsection (1), where in respect of a mining claim, no dispute is on file and, ^{Saving}

- (a) one year has elapsed since the day of the recording of the claim; or
- (b) the first prescribed unit of assessment work has been performed and filed and, where necessary, approved,

the mining claim shall be conclusively deemed to have been staked out and recorded in compliance with the requirements of this Act and the regulations.

52.—(1) Subsection 85 (1) of the said Act is amended by striking out “patent” in the second line and inserting in lieu thereof “lease”.

(2) Clause 85 (1) (a) of the said Act is repealed.

(3) Clause 85 (1) (c) of the said Act is repealed and the following substituted therefor:

- (c) if the prescribed work is not duly performed and reported as required by section 76 unless an application and payment for a lease of the mining claim is made under section 94.

(4) Clauses 85 (1) (d) and (e) of the said Act are repealed.

(5) Subsection 85 (2) of the said Act is amended by striking out “licensee” in the second line and inserting in lieu thereof “person”.

53. Sections 86 and 87 of the said Act are repealed and the following substituted therefor:

86.—(1) On application therefor being made to the recorder within thirty days before the expiration of the time for filing a report of assessment work, the recorder may allow an extension of time for performing and filing the report of the assessment work on such conditions as are prescribed. ^{Extension of time by recorder}

(2) Where forfeiture or loss of rights has occurred, the lands, mining rights or mining claims concerned are not open for staking until 7 o'clock in the forenoon of the day immediately following that upon which forfeiture or loss of rights occurred. ^{Re-staking}

When order
takes effect

(3) An order made by the recorder under this section comes into effect and shall be deemed to have been recorded at the time that the application was received in the office of the recorder, notwithstanding that such order may not have been immediately entered in the record book.

Cancellation
of record

(4) The recorder, upon a forfeiture or abandonment of or loss of rights in a mining claim, shall forthwith enter a note thereof, with the date of entry, upon the record of the claim and mark the record "Cancelled", and shall post up forthwith in the recorder's office a notice of cancellation.

54. Section 88 of the said Act is repealed and the following substituted therefor:

Death of
licensee or
holder

88. Where a licensee in whose name a mining claim has been staked out dies before the claim is recorded or where the holder of a claim dies before issue of the lease for the claim, no other person is, without leave of the Commissioner, entitled to stake out or record a mining claim upon any part of the same lands or to acquire any right, privilege or interest in respect thereof within twelve months after the death of such licensee or holder, and the Commissioner may at any time make such order as the Commissioner considers just for vesting the claim in the representative of such holder and extending the time for performing the work or applying for lease, notwithstanding any lapse, abandonment, cancellation, forfeiture or loss of rights under any provision of this Act.

55. Subsection 89 (1) of the said Act is repealed and the following substituted therefor:

Inspection by
Commissioner,
recorder or
inspector

(1) The Commissioner or the recorder may inspect or order an inspection of, and an inspector or other officer appointed by the Minister may inspect, a mining claim at any time with or without notice to the holder for the purpose of ascertaining whether this Act has been complied with, but after one year from the recording of the claim, or after the first prescribed unit of assessment work has been performed, filed and approved, no such inspection shall, unless ordered by the Minister under subsection 90 (5), be made for the purpose of ascertaining whether the claim has been staked out in the prescribed manner.

56.—(1) Subsection 90 (4) of the said Act is amended by striking out "licensee" in the seventh line and inserting in lieu thereof "holder".

(2) Section 90 of the said Act is amended by adding thereto the following subsection:

(5) Notwithstanding subsections 56 (5) and 84 (2), the Minister may challenge the validity of a mining claim at any time during the life of the claim and may direct the recorder to inspect the claim in accordance with section 89.

Inspection
ordered by
Minister

57. The said Act is further amended by adding thereto the following section:

91a.—(1) If there is an owner of the surface rights of the land comprising a mining claim, where a holder of the mining claim first proposes to do ground assessment work on such land, the holder shall give notice in the prescribed form to the owner of the surface rights of the holder's intention to perform the work.

Notice of
intention to
perform
assessment
work

(2) A person who has given notice under this section may enter on the land and perform the work at any time immediately following the day the notice is given.

Entry on
land to
perform work

(3) A recorder shall not record ground assessment work unless,

Where work
not to be
recorded

- (a) the holder files with the recorder a certificate in the prescribed form establishing that the required notice was given; or
- (b) the recorder determines that it is not feasible in the circumstances to give notice to the owner of the surface rights.

58. Section 92 of the said Act is repealed and the following substituted therefor:

92.—(1) In this section and in section 91a, "owner of the surface rights" means a person to whom the surface rights of land have been granted, sold, leased or located.

Definition

(2) Where there is an owner of surface rights of land or where land is occupied by a person who has made improvements thereon that, in the opinion of the Minister, entitles that person to compensation, a person who,

Right of
owner of
surface rights
to compen-
sation

- (a) prospects, stakes out or causes to be staked out a mining claim or an area of land for a boring permit;
- (b) formerly held a mining claim or an area of land for a boring permit that has been cancelled, abandoned or forfeited;

- (c) is the holder of a mining claim or an area of land for a boring permit and who performs assessment work; or
- (d) is the lessee or owner of mining lands and who carries on mining operations,

on such land, shall compensate the owner of the surface rights or the occupant of the lands, as the case may be, for damages sustained to the surface rights by such prospecting, staking out, assessment work or operations.

Right of holder of mining claim, etc., to compensation

(3) Every person who damages mineral exploration workings or claim posts, line posts, tags or surveyed boundary markers delineating mining lands shall compensate the holder of the mining claim or the owner or lessee of the mining lands, as the case may be, for damages sustained.

Determination of compensation by Commissioner

(4) In default of agreement and upon application made in the prescribed form by either party, the amount and the time and manner of payment of compensation under subsection (2) or (3) shall be determined by the Commissioner after a hearing and, subject to appeal to the Divisional Court where the amount claimed exceeds \$1,000, the Commissioner's order is final.

Prohibiting work pending settlement

(5) The Commissioner may order the giving of security for payment of the compensation and may prohibit, pending the determination of the proceeding or until the compensation is paid or secured, further prospecting, staking out or working by any person.

Lien for compensation

(6) The compensation is a special lien upon any mining claim or mining lands, as the case may be, and no further prospecting, staking out or performing of work, except by leave of the Commissioner, shall be done by any person after the time fixed for the payment or securing of the compensation, unless the compensation has been paid or secured as directed.

Power of Commissioner to vary, etc., order

(7) The Commissioner, on notice to all interested parties and for good cause shown, on such terms as seem just, may by subsequent order or award at any time change, supplement, alter, vary or rescind any order made under this section.

Priorities

(8) In a hearing under subsection (4), the Commissioner shall take into account which of the rights was applied for first and, except where injustice would result, shall give the holder

of those rights due priority in the consideration of the dispute between the parties.

(9) Where unpatented mining claims are affected by an agreement entered into in respect of the compensation referred to in subsection (2), or by an order made under subsection (4), the agreement or a certified copy of the order, as the case may be, may be filed by the person to whom the compensation is payable in the office of the recorder upon payment of the prescribed fee.

Filing of agreement or order in office of recorder

(10) Where an unpatented mining claim is subsequently leased, the Minister shall cause any agreement or order filed in the recorder's office under subsection (9) that affects the leased lands to be registered against the lands in the proper land registry office and the person to whom the compensation is payable is entitled to enforce the terms of the agreement or order against the lessee and, subject to the *Registry Act* and the *Land Titles Act*, against any subsequent lessee of the land.

Registration of order or agreement

R.S.O. 1980, cc. 445, 230

59.—(1) Subsections 94 (1), (2), (3), (4) and (5) of the said Act are repealed and the following substituted therefor:

(1) Upon compliance with this Act and the regulations and upon payment of the rent for the first year, the holder of a mining claim is entitled to a lease of the claim.

Right to lease of claim

(2) The application and payment for a lease may be made to the recorder at any time after the first prescribed unit of assessment work on a mining claim is performed, filed and, if necessary, approved, and the application shall be accompanied by,

Application for lease

- (a) a certificate of performance of the prescribed units of assessment work that are required to be performed as of the time of application;
- (b) a plan of survey where required under section 108 or 109;
- (c) an agreement or an order of the Commissioner indicating that surface rights compensation, if any, has been paid, secured or settled; and
- (d) the prescribed fee.

(3) A lease under this section shall be for a term of twenty-one years at the prescribed rental, payable in advance, for the first year and at the prescribed rate for each subsequent year.

Term of lease

Lease of mining rights (4) The holder of a mining claim may elect to apply for a lease of the mining rights only.

Rental (5) Where a lease under this section is for mining rights only, the rental shall be at the prescribed rate for such a lease.

(2) Subsection 94 (6) of the said Act is repealed.

(3) Subsections 94 (8) and (9) of the said Act are repealed and the following substituted therefor:

Renewal lease rental (8) The annual rental for a renewal lease is the prescribed amount, payable in advance.

Refusal to renew lease (9) The Minister shall refuse to renew a lease unless,

- (a) the production of minerals has occurred continuously for more than one year since the issuance or last renewal of the lease; or
- (b) the lessee has demonstrated to the satisfaction of the Minister a reasonable effort to bring the property into production.

(4) Subsection 94 (12) of the said Act is amended by striking out “prescribed by” in the second line and inserting in lieu thereof “set out in”.

(5) Subsections 94 (16), (17), (18), (19) and (20) of the said Act are repealed and the following substituted therefor:

Disposition of surface rights
1989, c. 23
R.S.O. 1980, c. 413 (16) Any surface rights reserved in a lease or renewal thereof may be dealt with under the *Aggregate Resources Act*, 1989 or under the *Public Lands Act* or the regulations made under those Acts.

Additional work where area of claim exceeds prescribed size (17) Where the area of the mining claim exceeds by more than 15 per cent the prescribed size for a mining claim and the claim is not reduced in size under section 110, there shall be performed additional assessment work or moneys paid in lieu thereof as prescribed for the excess area.

Contiguous claims (18) Where there is a group of contiguous claims held in the name of one claim holder and their average area does not exceed by more than 15 per cent the size prescribed for a mining claim, the Minister may direct that subsection (17) does not apply.

(19) Where additional work is required under subsection (17), the Minister may direct the time within which such work is to be performed and reported.

Where
additional
work
required

60.—(1) Subsections 95 (1) and (2) of the said Act are repealed and the following substituted therefor:

(1) In this section, “lease” means a lease of surface and mining rights or of mining rights issued under,

Definition

- (a) section 47, 52 or 100 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or a predecessor thereof; or
- (b) subsection 190 (3) of this Act, or a predecessor thereof,

and includes a renewal of such a lease.

(2) Subject to subsection (3), notwithstanding the provisions of a lease, the annual rental for a lease is the prescribed amount.

Amount of
rent

(2) Subsection 95 (4) of the said Act is repealed and the following substituted therefor:

(4) A lease referred to in clause (1) (a) is renewable in perpetuity for periods of ten years and every renewal shall date from the day following the expiry of the lease if application therefor is made within ninety days of the expiration of the lease or within such further period as the Minister, in the circumstances of the case, considers proper.

Renewal of
lease

(3) Subsection 95 (6) of the said Act is amended by striking out “has not been renewed under subsection (4) or” in the first and second lines.

(4) Subsection 95 (9) of the said Act is repealed and the following substituted therefor:

(9) The holder of a lease, upon application in writing therefor and upon the surrender of the lease and upon meeting the conditions set out in subsection 94 (9), may be issued a lease under section 94 for a term of twenty-one years and the rental for each year of the term thereof shall be that prescribed for the purposes of section 94 for years subsequent to the first year of a term.

Lease may
be issued
under s. 94

61. Section 96 of the said Act is repealed and the following substituted therefor:

Exchange of
lease

96.—(1) The holder of a lease issued under this Act, upon application in the prescribed form to the Minister, accompanied by the prescribed fee and upon the surrender of the lease, may be issued in exchange for that lease, on such terms and conditions as the Minister considers appropriate, two or more replacement leases.

Terms of
replacement
leases

(2) Replacement leases issued under subsection (1) shall cover together the same lands as were covered by the surrendered lease, shall be for a term equal to the balance of the term of the surrendered lease and shall be at the same rental rate per hectare as that lease.

62. Subsection 97 (4) of the said Act is repealed and the following substituted therefor:

Amount of
rent

(4) The annual rental of a lease or renewal under this section is the prescribed amount, payable in advance.

63. Subsection 102 (2) of the said Act is repealed and the following substituted therefor:

Disposition
of surface
rights
1989, c. 23
R.S.O. 1980,
c. 413

(2) Any surface rights reserved under this section may be dealt with under the *Aggregate Resources Act, 1989* or under the *Public Lands Act* or the regulations made under those Acts.

64.—(1) Subsection 108 (1) of the said Act is amended by striking out “patent” in the first line.

(2) Subsection 108 (2) of the said Act is repealed and the following substituted therefor:

Prescribed
methods of
surveying
R.S.O. 1980,
c. 493

(2) Subject to the *Surveys Act*, the prescribed methods and procedures shall be followed in the surveying of mining claims.

(3) Subsection 108 (5) of the said Act is repealed.

(4) Subsections 108 (6), (7), (8) and (9) of the said Act are repealed and the following substituted therefor:

Additional
work where
area exceeds
prescribed
size

(6) Where a perimeter survey is made under subsection (3), the rental shall be computed on the total area of the claims within the perimeter survey and, where the average area of the claims within the perimeter survey exceeds by more than 15 per cent the prescribed size for a mining claim, there shall be performed additional assessment work or moneys paid in lieu thereof as prescribed for the excess area.

(7) Where additional work is required under subsection (6), the Minister may set out in an order the time within which such work is to be performed and recorded.

Where additional work required

(8) Before a perimeter survey is made, the Minister may order the inspection of the mining claims proposed to be included in the perimeter survey and an inspector or other officer of the Ministry shall prepare and submit to the Minister a report and plan according to the instructions provided by the Minister and the survey shall not be directed to be made unless the Minister is satisfied that the requirements of this Act have been complied with.

Inspection before perimeter survey made

(9) The fee for an inspection under subsection (8) is the prescribed amount, payable in advance, and the Minister may require the applicant to provide the inspector with suitable transportation to the location of the claims.

Fee

65.—(1) Subsection 109 (1) of the said Act is amended by striking out “patent” in the first line and by inserting after “claim” in the seventh line “or the perimeter survey of mining claims”.

(2) Subsection 109 (2) of the said Act is repealed.

66.—(1) Subsection 110 (1) of the said Act is amended by striking out “acreage” in the third line and in the fourth line and inserting in lieu thereof in each instance “size”.

(2) Subsection 110 (2) of the said Act is amended by striking out “licensee” in the third line and in the fourteenth line and inserting in lieu thereof in each instance “holder”.

67. The subheading preceding section 112 of the said Act is struck out and the following substituted therefor:

PETROLEUM AND NATURAL GAS

68. Parts V and VI of the said Act are repealed.

69. The said Act is further amended by adding thereto the following Part:

PART VII

SURFACE MINING OF NON-METALLIC MINERALS

118.—(1) Any person who proposes to commence the surface mining of non-metallic minerals, excluding natural gas and petroleum, on Crown land not in a part of Ontario that

Surface mining of non-metallic minerals

R.S.O. 1980,
c. 378
1989, c. 23

has been designated under the *Pits and Quarries Control Act* or under subsection 5 (2) of the *Aggregate Resources Act, 1989*, may proceed,

- (a) by applying for and obtaining an aggregate permit or a licence under the *Aggregate Resources Act, 1989*; or
- (b) by complying with the requirements of Part II of this Act.

Lease of
Crown land

(2) Any person who proposes to commence the surface mining of non-metallic minerals, excluding natural gas and petroleum, on Crown land in a part of Ontario that has been designated under the *Pits and Quarries Control Act* or under subsection 5 (2) of the *Aggregate Resources Act, 1989*, in addition to an aggregate permit or a licence issued under the *Aggregate Resources Act, 1989*, may also obtain a lease from the Crown for the lands affected by complying with the provisions of Part II of this Act.

Staking out
of mining
claim

119. Notwithstanding that an aggregate permit or a licence has been obtained under the *Aggregate Resources Act, 1989*, any licensee under this Act may stake out a mining claim or claims on Crown land affected by the permit or licence, in which case the provisions of this Act apply and any question of property damage shall be determined in the manner set out in section 92.

70.—(1) Subsection 131 (1) of the said Act is amended by striking out “licensees” in the third line and inserting in lieu thereof “persons”.

(2) Subsection 131 (2) of the said Act is amended by striking out “arising before the issue of a certificate of record of a mining claim” in the first and second lines.

(3) Subsection 131 (6) of the said Act is repealed and the following substituted therefor:

Recorder
may order
the removal
of witness
posts, etc.

- (6) The recorder may make an order directing a holder,
 - (a) to move, remove or alter corner posts, line posts or witness posts and the writing or inscribing thereon;
 - (b) to blaze, re-blaze, move or alter existing or missing claim lines;

- (c) to place or replace metal tags that are missing or have been removed or destroyed after having been affixed to any posts; or
- (d) to place or replace missing or defective posts and to affix tags to such posts,

and the recorder shall set out in the order the time within which the work shall be completed and reported to the recorder.

(6a) Where the work set out in an order under subsection (6) has been completed within the time set out in the order, the claim shall thereafter be deemed to be in compliance with this Act.

Claim
deemed in
compliance
with Act

(4) Subsection 131 (7) of the said Act is repealed and the following substituted therefor:

(7) Where the work set out in an order under subsection (6) has not been completed within the time set out in the order, the recorder may extend the time for completing the work or may cancel the claim or claims on which the work was to have been done and shall, in the case of cancellation, by registered letter, mailed not later than the next day after the cancellation, notify the holder of the recorder's action and the reason therefor.

Recorder
may extend
time or
cancel claim

(5) Subsection 131 (8) of the said Act is repealed and the following substituted therefor:

(8) This section applies to the manner in which the metal tags have been affixed to the corner posts notwithstanding that the time prescribed for affixing the tags has not expired.

Application

71. Subsection 133 (2) of the said Act is repealed and the following substituted therefor:

(2) Where, in the opinion of the Minister, the public interest is affected by a decision, act or thing mentioned in subsection (1), an officer or employee of the Ministry designated by the Minister for that purpose may,

Where public
interest
affected

- (a) be added as a party to an appeal taken under subsection (1); or
- (b) take an appeal under subsection (1), in which case no fee in respect of the appeal is payable.

72.—(1) Subsection 135 (1) of the said Act is repealed and the following substituted therefor:

Application
for
appointment
for hearing

(1) Application to the Commissioner for an appointment for a hearing may be made in writing by any party to the proceeding upon such notice and to such persons as the Commissioner directs and shall be accompanied by the prescribed fee for recording any order made by the Commissioner in the matter.

(2) Subsection 135 (4) of the said Act is repealed and the following substituted therefor:

Leave for
hearing

(4) In any matter or proceeding, other than an appeal, in any case where leave to take the proceeding is necessary, the Commissioner may give leave upon such terms as to security for costs or otherwise as the Commissioner considers just.

73.—(1) Clause 137 (1) (b) of the said Act is amended by inserting after “things” in the third line “under oath or otherwise”.

(2) Subsection 137 (1) of the said Act is amended by striking out “and” at the end of clause (d) and by adding thereto the following clauses:

1984, c. 11

- (f) upon the application of a party to the proceedings, order the examination of any other party before an official examiner appointed under the *Courts of Justice Act, 1984*; and
- (g) order any party to the proceedings who intends to present evidence at the hearing to file with the Commissioner and serve on each of the other parties, prior to the appearance of any witness and within such time as the Commissioner directs, a statement indicating the evidence intended to be relied upon.

74.—(1) Section 150 of the said Act is amended by adding thereto the following subsections:

When order
of Commis-
sioner takes
effect

(1a) Every order or judgment of the Commissioner shall take effect immediately upon its signing, subject to any express provision therein.

Oral reasons
R.S.O. 1980,
c. 484

(1b) Notwithstanding section 17 of the *Statutory Powers Procedure Act*, the reasons for a decision of the Commissioner may be delivered orally.

(1c) Any party to a proceeding may cause an order or judgment of the Commissioner to be filed in the office of the recorder. Filing of order

(1d) The recorder shall forthwith give notice in writing of the filing by registered mail or otherwise to the solicitors of the parties appearing by solicitor and to the parties not represented by a solicitor. Notice of filing

(1e) Where the order or judgment is not filed with the recorder within fifteen days of the order being signed, the Commissioner shall cause a duplicate thereof to be filed with the recorder. Filing of duplicate order

(2) Subsections 150 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) The Commissioner shall transmit the evidence, the exhibits, the statement, if any, of view or of special knowledge or skill, and the reasons for any order or judgment to the recorder. Transmission of evidence, etc., to recorder

75. Section 151 of the said Act is repealed and the following substituted therefor:

151. Where a decision of the Commissioner finally disposes of the matter in question so far as the Commissioner is concerned, the Commissioner shall send the order or judgment to the parties by registered mail. Final order or judgment sent to parties

76. Section 152 of the said Act is repealed and the following substituted therefor:

152. Any party to a proceeding is entitled on payment of the prescribed fee to a certified copy of any order or judgment. Certified copy of order or judgment

77. Part IX of the said Act is repealed and the following substituted therefor:

PART IX

OPERATION OF MINES

160.—(1) In this Part,

Definitions

“abandoned” means the proponent has ceased or suspended indefinitely advanced exploration, mining, or mine production on the site, without rehabilitating the site;

- “advanced exploration” means the excavation of an exploratory shaft, adit, or decline, the extraction of material in excess of the prescribed quantity, the installation of a mill for test purposes or any other prescribed work;
- “closed out” means that all the requirements of an accepted closure plan have been complied with and is the final stage of closure;
- “closure” means the temporary suspension, inactivity or close out of advanced exploration, mining or mine production;
- “closure plan” means a plan prepared in the prescribed manner to rehabilitate a project at any stage of closure and includes the information, particulars, maps and plans prescribed, as well as provision in the prescribed manner of financial assurance to the Crown for the performance of the requirements of the closure plan;
- “Director” means the Director of Mine Rehabilitation for the mining division or divisions in which is situate the land in respect of which an act, matter or thing is to be done under this Part;
- “inactivity” means that advanced exploration, mine production and mining operations on a site have been suspended indefinitely in accordance with a closure plan, and although protective measures are in place on the site, the site is no longer being monitored by the proponent on a continuous basis;
- “mine production” means mining that is producing any mineral or mineral-bearing substance either for immediate sale or for stockpiling for ultimate sale;
- “progressive rehabilitation” means rehabilitation done continually and sequentially, within a reasonable time, during the entire period that the project continues;
- “project” means a mine or the activity of advanced exploration, mining or mine production;
- “proponent” means the holder of an unpatented mining claim or licence of occupation or an owner as defined in paragraph 21 of section 1;
- “protective measures” means steps taken in accordance with the prescribed standards to prevent personal injury or property damage that is reasonably foreseeable as a result of closure commencing;

“rehabilitate” means measures taken in accordance with the prescribed standards to treat the land or lands on which advanced exploration, mining or mine production has occurred so that the use or condition of the land or lands,

(a) is restored to its former use or condition, or

(b) is made suitable for a use that the Director sees fit,

and includes taking protective measures;

“site” means the land or lands on which a project is located;

“temporary suspension” means advanced exploration, mining or mine production have been suspended, in accordance with an accepted closure plan, on either a planned or unplanned basis, but the site is being monitored on a continuous basis by the proponent and protective measures are in place.

(2) For greater certainty, but without restricting the scope of this Part, this Part applies to projects including, Application of Part

(a) the underground mining of minerals, excluding natural gas, petroleum and salt by brining method;

(b) the surface mining of metallic minerals;

(c) the surface mining of non-metallic minerals, excluding natural gas and petroleum, on land that is neither Crown land nor land in parts of Ontario that have been designated under the *Pits and Quarries Control Act* or under subsection 5 (2) of the *Aggregate Resources Act, 1989*; R.S.O. 1980, c. 378
1989, c. 23

(d) advanced exploration on mining lands.

DIRECTORS AND MINERAL DEVELOPMENT OFFICERS

161.—(1) The Minister may appoint as Mineral Development Officers such employees of the Ministry as the Minister considers necessary, whose function it is to co-ordinate and expedite communication between the mining industry, the public and affected ministries and agencies of the Government of Ontario. Mineral Development Officers

(2) The Minister may appoint an officer or employee of the Ministry as Director of Mine Rehabilitation for each such mining division or group of mining divisions as the appointment specifies. Directors

ADVANCED EXPLORATION

Closure plan,
advanced
exploration

161a.—(1) No proponent shall commence or recommence advanced exploration without providing the Director with notice in the form and manner prescribed and the project may proceed unless, within thirty days of receiving the notice, the Director in writing has required the proponent to,

- (a) give public notice at the prescribed time and in the prescribed form and manner;
- (b) submit a proposed closure plan; or
- (c) comply with both clauses (a) and (b).

Where public
notice only
required

(2) Where the Director has required the proponent to give public notice only under clause (1) (a), the project may proceed after public notice has been given.

Changes to
closure plan

(3) Where the Director has required the proponent to submit a proposed closure plan under clause (1) (b),

- (a) the Director may by written notice require changes to the proposed closure plan; and
- (b) the project shall not proceed until the Director has accepted in writing the closure plan, and the public notice, if required under clause (1) (a), has been given.

MINE PRODUCTION

Closure plan,
mine
production

161b.—(1) No proponent shall commence or recommence mine production without,

- (a) providing the Director with notice in the prescribed form and manner;
- (b) giving public notice at the prescribed time and in the prescribed form and manner;
- (c) submitting a proposed closure plan; and
- (d) receiving the Director's written acceptance of the closure plan required by clause (c).

Changes to
closure plan

(2) The Director may require changes to a proposed closure plan required by clause (1) (c) prior to accepting it.

PROGRESSIVE REHABILITATION

161c. A proponent shall take all reasonable steps to progressively rehabilitate a site whether or not closure has commenced or an accepted closure plan is in place.

Progressive rehabilitation

CLOSURE PLANS

161d.—(1) Every proponent whose project is subject to a closure plan accepted under this Part shall comply with the closure plan.

Compliance with closure plan

(2) Where closure commences on a site, subject to a closure plan, the proponent shall,

Notice closure has commenced

(a) forthwith notify the Director in writing that closure has commenced; and

(b) comply with the requirements of the closure plan.

(3) Where a project has commenced or recommenced under section 161a or 161b, within twelve months of the commencement or recommencement, and for every twelve-month period following thereafter while the project continues, the proponent shall submit annually to the Director a report prepared in the prescribed manner.

Annual report to Director

(4) If, on the receipt of the report required under subsection (3) or on the basis of information received from a rehabilitation inspector under subsection 161f (1), the Director has reasonable grounds for believing,

Submission of, or amendments to, closure plan

(a) that the closure plan, including the financial assurance requirement, is inadequate to properly rehabilitate the site because the project has either expanded or other conditions have changed; or

(b) in the case of an advanced exploration project not currently subject to a closure plan, the project has expanded or other conditions have changed to a point which necessitate a closure plan,

the Director may require by written notice the proponent to submit to the Director a proposed closure plan for the Director's consideration, or, where a closure plan is already in place, to submit proposed amendments to a closure plan, including proposals respecting an increase in the amount of financial assurance required to rehabilitate the site.

Notice of expansion or alteration of project

(5) Where a proponent plans to expand or alter a project, the proponent shall forthwith give written notice in the prescribed form to the Director.

Changes to closure plan

(6) Where the Director has received either proposed amendments to existing closure plans or proposed closure plans under subsection (4), the Director may require changes to the proposed amendments or plan before notifying the proponent that the proposed amendments or plan are acceptable.

Project subject to plan or amended plan

(7) Upon receipt of the written notice of the Director that the proposed amendments or plan that may be required under subsection (4) are acceptable, the project shall operate subject to the plan or amended plan, as the case may be.

FINANCIAL ASSURANCE

Form and amount of financial assurance
R.S.C. 1985,
c. B-1
R.S.O. 1980,
c. 192

161e.—(1) The financial assurance required as part of a closure plan shall be in the form of cash, a letter of credit from a bank named in Schedule A to the *Bank Act* (Canada), a bond of a guarantee company approved under the *Guarantee Companies Securities Act* or another form of security acceptable to the Director and shall be in the amount specified in the closure plan accepted by the Director or any amendment thereto.

Order providing for performance of rehabilitation measure

(2) Where the Director has reasonable and probable grounds to believe that any rehabilitation measure required by the accepted closure plan in respect of which financial assurance was given has not been or will not be carried out in accordance with the closure plan, the Director by order may provide for the performance of the rehabilitation measure in the manner set out in subsection (5).

Notice

(3) The Director shall give the proponent written notice of the Director's intention to issue the order referred to in subsection (2) at least forty-five days prior to the date the order is to be issued.

Parties affected

(4) Both the notice and the order under this section shall be directed to the proponent to whom the approval for the closure plan was issued or directed and to any person to the knowledge of the Director that has provided the financial assurance for or on behalf of the proponent to whom the approval of the closure plan was issued or shall be directed to the successor or assignee of such person.

Realization of security

(5) Upon the issuance of an order by the Director under subsection (2), the Crown may,

- (a) use any cash;
- (b) realize any bond or letter of credit; and
- (c) enforce any other security,

provided or obtained as the financial assurance for the performance of the rehabilitation measures and may carry out the rehabilitation measures, or appoint an agent to do so, as the Director considers necessary.

(6) A proponent may apply to the Director for a reduction of the financial assurance to an amount consistent with the financial requirements of the rehabilitation work left to be completed where, Application for reduction of financial assurance

- (a) work has been performed in accordance with the requirements of an accepted closure plan; or
- (b) a reduction in the financial assurance requirement is justified in a report submitted under subsection 161d (3).

REHABILITATION INSPECTORS

161f.—(1) For the purposes of monitoring the closure of projects, including mines that have been abandoned, the Minister may designate in writing any person who may, but need not be, an employee of the Ministry as a rehabilitation inspector. Rehabilitation inspectors

(2) For the purpose of carrying out the duties and exercising the powers under this Part, a rehabilitation inspector may, without a warrant or court order, at any reasonable time and with any reasonable assistance, make inspections, and in the exercise of that authority may, Inspections by rehabilitation inspector

- (a) enter into or onto any mining lands or premises connected or associated with any project or abandoned mine, other than a room or place actually used as a dwelling;
- (b) make such inspections, examinations, inquiries or tests considered necessary in order to determine the nature and extent of any existing or potential hazards on mining lands;
- (c) in any inspection, examination, inquiry or test, be accompanied and assisted by any person having special, expert or professional knowledge of any

matter relevant to the inspection, examination, inquiry or test;

- (d) request the production of any drawings, specifications, licence, document, record or report;
- (e) on giving a receipt therefor, remove any drawing, specifications, licence, document, record or report produced in response to a request under clause (d) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced them;
- (f) inspect any work related to rehabilitation necessary to complete a report to the Director under subsection (1); and
- (g) make reasonable inquiries of any person, orally or in writing.

Inspection to
be permitted

(3) A proponent shall forthwith on request permit a rehabilitation inspector to carry out any inspection of any place, other than any room actually used as a dwelling, under subsection (2).

Obstruction
prohibited

(4) No person shall hinder or obstruct a rehabilitation inspector in the lawful performance of duties or furnish the rehabilitation inspector with false information or refuse to furnish information required for the purposes of this Part and the regulations.

Inspection
warrant

(5) Where a provincial judge or justice of the peace is satisfied on evidence upon oath by a rehabilitation inspector that there is reasonable ground for believing that it is appropriate for the administration of this Part or the regulations made thereunder for the rehabilitation inspector to do anything set out in subsection (2), and that the rehabilitation inspector may not be able to effectively carry out the duties assigned without an order under this section because,

- (a) a person has prevented the rehabilitation inspector from doing anything set out in subsection (2);
- (b) there is reasonable ground to believe that a person may prevent a rehabilitation inspector doing anything set out in subsection (2); or
- (c) it is impractical because of the remoteness of the place to be inspected or because of any other reason, for the rehabilitation inspector to obtain an

order under this section without delay if access is denied,

the judge or justice may issue or renew a warrant in the prescribed form authorizing the rehabilitation inspector named in the warrant to do anything set out in subsection (2) and specified in the warrant for the period of time set out in the order.

(6) Where a provincial judge or justice of the peace is satisfied on evidence upon oath of a rehabilitation inspector that there is reasonable and probable ground for believing that,

Search
warrant

- (a) an offence under this Part has been committed; and
- (b) the entry into and search of a place actually used as a dwelling will afford evidence as to the commission of the offence,

the judge or justice may issue or renew a warrant in the prescribed form authorizing the rehabilitation inspector named in the warrant to enter and search the room or place with such reasonable assistance as may be necessary and upon giving a receipt therefor to remove from the room or place any document or thing that may afford evidence of the offence for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the room or place from which they were removed.

(7) A warrant under subsection (5) or (6) shall be executed at reasonable times as specified in the warrant and shall state the date upon which it expires, which shall be not later than fifteen days after the warrant is issued.

When to be
executed and
expiry

(8) Copies of, or extracts from, documents or things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Admissibility
of copies

(9) Upon request, a rehabilitation inspector who exercises a power set out in subsection (2) shall identify himself or herself as a rehabilitation inspector either by the production of a copy of the rehabilitation inspector's designation or in some other manner and shall explain the purpose of the inspection.

Identification

EXISTING PROJECTS

161g.—(1) Within ninety days of the coming into force of this Part, every proponent of a producing mine or of a mine

Notice to
Director

from which production is temporarily suspended shall give a notice in writing to the Director that contains the prescribed information relating to that mine.

Determination of Minister of time for submission of closure plan

(2) On the Director receiving a notice under subsection (1), the Minister shall determine the period of time within which the proponent must submit to the Director a proposed closure plan in respect of that mine.

Notice to proponent by Director

(3) The Director shall notify in writing a proponent who has given notice under subsection (1) of the period of time determined by the Minister within which the proponent must submit to the Director a proposed closure plan.

Submission of closure plan to Director

(4) A proponent who has received a notice under subsection (3) shall submit the required closure plan to the Director within the period of time specified in the notice.

Notice to submit closure plan

(5) The Director, within ninety days of the coming into force of this Part, may notify in writing any proponent of advanced exploration that has commenced before and is continuing on the day this Part comes into force of the period of time within which the proponent must submit a proposed closure plan.

Submission of closure plan to Director

(6) A proponent who has received a notice under subsection (5) shall submit the required closure plan to the Director within the time specified in the notice.

Changes to closure plan

(7) Prior to the Director informing the proponent that the closure plan required under subsection (4) or (6) is acceptable, the Director may by written notice require changes to the closure plan.

Mine to operate subject to closure plan

(8) On receiving written notification from the Director that the closure plan required under subsection (4) or (6) is acceptable, the project shall operate subject to the closure plan and sections 161c, 161d, 161e and 161f shall apply.

Where project abandoned after Part comes into force

161h.—(1) Notwithstanding section 161g, where a proponent takes steps to abandon the project on either an indefinite or permanent basis after the day this Part comes into force but before the Director informs the proponent that the closure plan required under subsection 161g (4) or (6) is acceptable, the proponent shall give written notice to the Director and shall take all reasonable steps to rehabilitate the site.

Order to rehabilitate site

(2) Where the Director has reasonable grounds for believing that a proponent has not complied with subsection (1), the Director may order the proponent to rehabilitate the site.

(3) Where, within a reasonable period of time, a proponent fails to comply with the order of the Director made under subsection (2), the Director may declare the project abandoned and may have the Crown or an agent thereof enter onto or into the site to implement rehabilitative measures.

Declaration
that mine
abandoned

(4) The Director shall not have the Crown or an agent thereof take the measures referred to in subsection (3) until the Director has given the proponent notice in the prescribed form and manner of the Director's declaration.

Notice of
declaration

(5) Where under subsection (3) the Director has declared a project abandoned and the proponent has possession of the site as a lessee, the Lieutenant Governor in Council, on the recommendation of the Minister, may declare the lease void, and subsections 94 (12), (13) and (14) apply with necessary modifications.

Declaration
that lease
void

(6) The Director shall not take the steps referred to in subsection (5) until the Director has given the proponent the prescribed notice required under subsection (4), including in that notice the Director's intention to recommend to the Minister the steps referred to in subsection (5).

Notice to
proponent

161i.—(1) The Director may by written notice require the proponent of a project the Director considers abandoned on the day this Part comes into force to submit within a specified period of time a proposed closure plan to rehabilitate the site.

Where
project
abandoned
when Part
comes into
force

(2) Prior to the Director informing the proponent that a closure plan required under subsection (1) is acceptable, the Director may by written notice require changes to the closure plan.

Changes to
closure plan

(3) On receiving written notification from the Director that a closure plan required under subsection (1) is acceptable, the proponent shall complete the rehabilitation of the site in accordance with the closure plan.

Rehabili-
tation of site

(4) Where the proponent of a site fails to comply with the Director's requirements under subsection (1) or (2), the Director may declare the project abandoned and may have the Crown or an agent of the Crown enter onto or into the site to implement rehabilitative measures.

Declaration
that mine
abandoned

(5) The Director shall not have the Crown or an agent thereof take the steps referred to in subsection (4) until the Director has given the proponent notice in the prescribed form and manner of the Director's declaration.

Notice of
declaration

Declaration
that lease
forfeited

(6) Where under subsection (4) the Director has declared a project abandoned and the proponent has possession of the site as a lessee, the Lieutenant Governor in Council, on the recommendation of the Minister, may declare the lease void, and subsections 94 (12), (13) and (14) apply with necessary modifications.

Notice to
proponent

(7) The Director shall not take the steps referred to in subsection (6) until the Director has given the proponent the prescribed notice required under subsection (5), including in that notice the Director's intention to recommend to the Minister the steps referred to in subsection (6).

VOLUNTARY SURRENDER OR ABANDONMENT

Refusal of
voluntary
surrender

161j.—(1) Before accepting the voluntary surrender of lands referred to in section 198, where the Director has reasonable grounds for believing that the proponent may have failed to rehabilitate the site in a manner consistent with a closure plan accepted by the Director, or where no closure plan exists, in accordance with the prescribed standards for rehabilitation, the Minister may refuse to accept the surrender of such lands, and, upon such refusal, the Director may order the proponent to comply with the requirements of the accepted closure plan or to rehabilitate the site in accordance with the prescribed standards.

Application
for injunction

(2) Where the proponent subject to an order under subsection (1) is an owner, the Director may register the order against the land or lands comprising the site in the proper land registry office and may apply to a Justice of the High Court for an injunction preventing the sale of the land or lands comprising the site, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands.

Refusal of
consent to
transfer lease

(3) Where the proponent subject to an order under subsection (1) is a lessee, the Director may recommend to the Minister that the Minister not consent to the transfer of the lease.

Where lease
expires

(4) Where the proponent subject to a Director's order under subsection (1) is a lessee under a lease which expires during the period in which the Director's order is in force, the lessee is not by reason only of the expiry of the lease relieved of the lessee's duties under this section.

Refusal of
consent to
transfer of
licence

(5) Where the proponent subject to an order under subsection (1) is the holder of a licence of occupation, the Direc-

tor may recommend to the Minister that the Minister not consent to a transfer of the licence.

(6) Notwithstanding section 83, where the proponent is a mining claim holder and where the Director has reasonable grounds for believing that the proponent may have failed to rehabilitate the site in a manner consistent with a closure plan accepted by the Director, or where no closure plan exists, in accordance with the prescribed standards for rehabilitation, the holder may not abandon the mining claim and the Director may order the proponent to comply with the requirement of the accepted closure plan, or to rehabilitate the site in accordance with the prescribed standards.

Where
mining claim
not to be
abandoned

(7) If a person subject to an order under subsection (1) or (6) fails to comply with the order, the Director may,

Realization
of security

- (a) where a closure plan applies, proceed and realize on the financial assurance under the provisions of section 161e; or
- (b) where no closure plan is in place, have the Crown, or an agent thereof, carry out rehabilitation measures in accordance with the prescribed standards.

COST OF WORK COMPLETED

161k.—(1) Where under subsection 161h (3) or 161i (4) the Director has the Crown or an agent of the Crown carry out rehabilitation measures, the resulting cost to the Crown is a debt due to the Crown and,

Where cost
debt due to
Crown

- (a) forms a lien and a charge on the site in favour of the Crown, realizable by action for sale of any part or all of the land or lands subject to it, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands; and
- (b) is recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected.

(2) The cost to the Crown of carrying out the rehabilitative measures under clause 161j (7) (b) is a debt due to the Crown recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected.

Idem

(3) Where under subsection 161e (5) the Crown or an agent of the Crown carries out rehabilitation measures and the

Idem

financial assurance held by the Crown is insufficient to cover the total cost incurred by the Crown in completing the rehabilitation measures, the extra cost not covered by the financial assurance is a debt due to the Crown which,

- (a) forms a lien and a charge on the site in favour of the Crown realizable by action for sale of any part or all of the land or lands comprising the site subject to the lien, including any buildings, structures, machinery, chattels or personal property situate in, on, over or under the land or lands; and
- (b) is recoverable by the Crown in any court in which a debt or money demand of a similar amount may be collected.

Registration
as charge

(4) Notice of the debt described in subsections (1) and (3) may be registered as a charge in the proper land registry office and no transfer of or other dealing with the site shall take place until the debt is paid and the notice is cancelled.

HEARINGS AND APPEALS

Appeal to
Commissioner

161-1.—(1) Where the Director,

- (a) requires a closure plan under clause 161d (4) (b) or subsection 161i (1);
- (b) requires changes to either an existing or proposed closure plan under subsection 161a (3), 161b (2), 161d (6), 161g (7) or 161i (2);
- (c) orders the performance of rehabilitation measures under subsection 161e (2);
- (d) orders the proponent to rehabilitate the site under subsection 161h (2); or
- (e) declares a project abandoned under subsection 161h (3) or 161i (4),

the proponent may appeal the Director's requirement, order or declaration to the Commissioner, if within thirty days of receiving the notice of the Director requiring the changes or proposed closure plans referred to in clause (a) or (b), receiving a Director's order referred to in clause (c) or (d), or receiving a Director's declaration referred to in clause (e), the proponent serves the Director with the prescribed notice requiring a hearing before the Commissioner, and, within

thirty days of being served, the Director shall refer the matter to the Commissioner for the hearing.

(2) On the service of a notice on the Director under subsection (1) requiring a hearing before the Commissioner, the requirement, order or decision of the Director is stayed until the disposition of the appeal by the Commissioner, unless upon application with notice by the Director, the Commissioner removes the stay where the matter relates to,

Automatic stay unless removed

- (a) changes to either an existing or proposed closure plan referred to in clause (1) (b); or
- (b) an order requiring the performance of rehabilitation measures referred to in clause (1) (c) or (d).

(3) Notwithstanding subsection (2), where the proponent appeals to the Commissioner under subsection (1) from a Director's requirement for changes to an existing closure plan under subsection 161d (4) and one of the changes required is to increase the amount of financial assurance required for the closure plan, the Commissioner shall refuse to hear the appeal unless the proponent has provided to the Director along with the notice required under subsection (1) the extra amount of financial assurance required under the closure plan to be held by the Crown pending the outcome of the proponent's appeal.

Provision of additional financial assurance

(4) The Commissioner upon application with notice by the proponent may waive the requirement under subsection (3) if the Commissioner considers it just to do so.

Waiver

(5) Upon hearing the appeal of the proponent, the Commissioner may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing.

Power of Commissioner on appeal

(6) Sections 135, 136, 137 and 139 to 152 of this Act apply to appeals under this section with necessary modifications.

Application

(7) An appeal lies to the Divisional Court on a question of law from any decision of the Commissioner under subsection (5) in accordance with the Rules of Civil Procedure.

Appeal to Divisional Court

(8) A party to a hearing before the Commissioner may, within thirty days after receipt of the Commissioner's decision or within thirty days after final disposition of an appeal, if any, under subsection (7), appeal in writing to the Minister on any matter other than a question of law and the Minister shall confirm, alter or revoke the decision of the Commissioner as to the matter in appeal as the Minister considers in the public interest.

Appeal to Minister

Parties

(9) The person requiring the hearing, the Director and any other person specified by the Commissioner are parties to the hearing.

SERVICE

Service of
notice

161m.—(1) Any notice required to be served under this Part or the regulations made in respect thereto is sufficiently served if delivered personally or sent by registered mail addressed to the person upon whom service is to be made at the last address of service appearing on the records of the Ministry.

When service
deemed
made

(2) Service made by registered mail shall be deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made establishes the person did not, acting in good faith, and for a cause beyond that person's control, receive a notice until a later date.

PART IX-A

BRINE WELLS

Definitions

162.—(1) In this section,

“brine well” means a hole or opening in the ground for use in brining;

“brining” means the extraction of salt in solution by any method;

“chief engineer” means a person designated by the Minister as chief engineer for the purposes of this section.

Permit to
bore or drill
a brine well

(2) No person shall drill or bore a brine well except under the authority of a permit in writing issued by the chief engineer upon application therefor in the prescribed form.

Permits not
issued

(3) A permit shall not be issued,

(a) to authorize a person to drill or bore a brine well on property in which the person does not own, hold or lease, or is not otherwise entitled to, the mining rights; or

(b) where the proposed brine well is nearer the boundary of such property than 150 metres.

Location of
brine well

(4) The chief engineer may reduce or extend the distance referred to in clause (3) (b) where in his or her opinion it is

advisable to do so and shall notify the applicant of any such reduction or extension within thirty days from the date upon which the application for the permit is filed.

(5) A permit is subject to the condition that the brine well in respect of which it is issued is bored or drilled in the location described in the permit.

Condition of permit

(6) A permit shall be issued or refused within thirty days from the date on which the application therefor is filed, except that, where notice has been given by the chief engineer under subsection (4), the permit shall be issued upon the receipt by the chief engineer of the applicant's consent thereto.

Time for issuance of permit

(7) Where a person drills or bores a brine well, he or she shall forward a log of the drilling or boring in the prescribed form in duplicate to the chief engineer within thirty days of the completion of the drilling or boring operations, and, upon the person's request in writing, the log shall be confidential for a period of six months.

Log of drilling operations

(8) A person boring or drilling a brine well shall take such reasonable measures as are necessary to control the infiltration of water from one horizon to any other horizon that may be penetrated during the drilling or boring operations.

Protection of water horizons

(9) All brine wells shall be cased and equipped so as to reasonably ensure against the uncontrolled flow of oil, natural gas, brine or water.

Protection of deposits

(10) Casing and equipment shall be in good condition and of a thickness and strength adequate to withstand any fluid pressure to which they might normally be subjected.

Standard of casing and equipment

(11) Where practicable, all brine wells shall be plugged by the person operating them, before being abandoned, in a manner that will,

Plugging of abandoned wells

(a) reasonably ensure that salt horizons and potential oil or natural gas producing horizons are protected; and

(b) retain water and brine in their original formations.

(12) Before commencing to plug a brine well, the person proposing to carry out the plugging operations shall report the particulars thereof to the chief engineer in the prescribed form.

Report of proposed plugging

Record of
plugging
operations

(13) Where a person plugs a brine well, he or she shall forward a record of the plugging in the prescribed form in duplicate to the chief engineer within thirty days of the completion of the plugging operations.

PART IX-B

STATISTICAL RETURNS

Annual
report

163.—(1) For the purposes of tabulation, every owner of a mine shall, on or before the 31st day of March in each year, send to the Minister on the forms provided a report of activities for the preceding year ending on the 31st day of December showing,

- (a) the nature of the work performed and the sums spent on mining and exploration;
- (b) the sums allocated for capital expenditures and repairs;
- (c) the current state of ore reserves;
- (d) the quantity and value of mineral production;
- (e) the number of employees; and
- (f) the revenues and expenses entailed in mining and exploration activities,

and the report shall be accompanied by such other information, plans and documents as the Minister requires, including, without limiting the scope of the requirement, information, plans and documents respecting,

- (g) inventory;
- (h) fuel and electricity consumed;
- (i) mining supplies and materials used;
- (j) non-mining supplies and materials used;
- (k) mining products, shipments and destinations;
- (l) non-mining products;
- (m) production details; and
- (n) wastes produced.

(2) The Minister may require an owner to send monthly or quarterly reports within such times as the Minister specifies.

Monthly or quarterly report

(3) In the event of the bankruptcy or winding-up of an owner, the trustee or liquidator shall, at the request of the Minister, send the report to the Minister.

Bankruptcy, etc.

(4) The Minister may require a licensee or permittee operating a pit or quarry under the *Aggregate Resources Act, 1989* to send information to the Minister in accordance with this section, and, where the Minister does so, subsections (1), (2) and (3) apply with necessary modifications.

Pit or quarry operations
1989, c. 23

78. Section 175 of the said Act is repealed.

79. Section 176 of the said Act is repealed and the following substituted therefor:

176.—(1) Every person who contravenes any provision of Part IX or the regulations made in respect thereto is guilty of an offence and on conviction is liable to a fine of not more than \$30,000 for each day on which the offence occurs or continues.

Penalty for offence against Part IX

(2) Every person who is subject to a Director's order under Part IX and who fails to take all reasonable steps to obey the conditions of the order is guilty of an offence and on conviction is liable to a fine of not more than \$30,000 for each day on which the offence occurs or continues.

Failure to comply with order of Director

(3) Where any person fails to,

Application for restraining order

- (a) comply with section 161a or 161b before commencing or recommencing a project;
- (b) comply with an accepted closure plan as required under subsection 161d (1);
- (c) submit the report required under subsection 161d (3);
- (d) give the Director notice of a planned expansion or alteration as required by subsection 161d (5); or
- (e) give the notice required under subsection 161g (1) or submit a closure plan required under subsection 161g (4) or (6),

the Director may apply at any time to a Justice of the High Court for an order prohibiting advanced exploration, mining or mine production on the site.

Destruction,
etc., of
rehabilitation
works

(4) Every person who alters, destroys, removes or impairs any rehabilitation work made in accordance with Part IX or an accepted closure plan without the written consent of the Minister is guilty of an offence and on conviction is liable to a fine of not more than \$30,000.

Duty of
directors and
officers

(5) Every director or officer of a corporation that engages in a project under Part IX has a duty to take all reasonable care to ensure that the corporation complies with the requirements of that Part.

Offence

(6) Every person who has a duty under subsection (5) and who fails to carry out that duty is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Liability of
directors and
officers

(7) A director or officer of a corporation is liable to conviction under subsection (6) whether or not the corporation has been prosecuted and convicted.

Increase in
fine equal to
monetary
benefit

(8) The court that convicts a person of an offence under Part IX, in addition to any other penalty imposed by the court, may increase a fine imposed upon the person by an amount equal to the amount of monetary benefit acquired by, or that accrued to, the person as a result of the commission of the offence, notwithstanding the imposition of the maximum fine provided for that offence.

Offence
1989, c. 23

176a. Every owner of a mine and every licensee or permittee operating a pit or quarry under the *Aggregate Resources Act, 1989* who contravenes section 163, or who makes a report under that section that is, to the owner's, licensee's or operator's knowledge, false in any particular, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 for each day on which the offence occurs or is continued.

80. Clause 177 (1) (a) of the said Act is repealed and the following substituted therefor:

(a) by a rehabilitation inspector.

81. Part XII of the said Act is repealed.

82. Section 190 of the said Act, as amended by the Statutes of Ontario, 1988, chapter 48, section 2, is repealed and the following substituted therefor:

190.—(1) The Lieutenant Governor in Council may make Regulations regulations generally,

1. governing the opening, construction, maintenance and use of roads to, through or over mining claims, mining locations or lands sold or leased as mining lands or recorded as mining claims or locations under this Act or a predecessor thereof, and for the opening, construction or maintenance and use of ditches, aqueducts or raceways through, over or upon such claims, locations or lands for the conveying and passage of water for mining purposes;
2. prescribing the form of any application, notice, report, log, record, dispute, certificate, permit, statement or other document required, permitted or provided for, by or under this Act;
3. prescribing the amount of any fee required to be paid to the Minister, the Ministry, the Commissioner or a recorder by or under this Act;
4. prescribing the manner of staking and the size and form of mining claims and the time and manner of affixing tags in respect thereto;
5. prescribing the annual rental for a licence of occupation;
6. prescribing the information to be shown on a sketch or plan accompanying an application to record a mining claim;
7. prescribing, for the purposes of subsection 62 (1), the conditions on which permission may be given to mine, mill and refine mineral substance from an unpatented mining claim;
8. prescribing the annual units of assessment work to be performed by the holder of a mining claim;
9. prescribing, for the purposes of subsection 76 (2), locations, other than the office of the recorder, in which may be filed assessment work reports and prescribing the date reports in respect of specified types of assessment work shall be filed;
10. prescribing the types of work eligible for assessment work credits, the method of calculating and approv-

ing credits for work performed and the manner of distribution of credits to mining claims;

11. prescribing the manner in which prospecting and regional surveys performed before staking are eligible for assessment work credits;
12. prescribing the manner in which exploration work performed on patented mining claims may be allocated to contiguous unpatented mining claims;
13. prescribing the conditions on which an extension of time for the performing of and filing a report on assessment work may be allowed by a recorder;
14. prescribing the annual rental for the first year for a lease of a mining claim, the rate for each subsequent year and the annual rental for a renewal lease;
15. prescribing the rental rate for the mining rights only in respect of a mining claim;
16. prescribing the additional assessment work to be performed in respect of any excess area of a mining claim or in respect of excess average area of mining claims within a perimeter survey;
17. prescribing, for the purposes of subsection 83 (2), the conditions on which the holder of a mining claim may abandon part of the claim;
18. prescribing the annual rental of a lease referred to in section 95;
19. prescribing the annual rental of a lease or renewal lease of surface rights referred to in section 97;
20. prescribing the methods and procedures to be followed in the surveying of mining claims;
21. prescribing the rate of interest to be imposed in the cases mentioned in subsections 196 (2) and 211 (2);
22. prescribing, for the purposes of subsection 198 (3), the size, form, manner and time of staking out and recording mining claims on land in which an interest is retained after surrender;

23. prescribing, for the purposes of section 202, the amount of tax to be paid for each hectare;
24. prescribing classes of instruments and documents that may be filed through transmission by electronic means in such manner as is prescribed;
25. defining any word or expression for the purposes of this Act and the regulations that has not already been expressly defined in this Act;
26. prescribing anything that by this Act is to be or may be prescribed.

(2) The Lieutenant Governor in Council may make regulations relating to Part IX, Idem

1. prescribing the manner of preparing closure plans, their form and content, and the information, particulars, maps and plans to be included therein;
2. prescribing standards for rehabilitation;
3. prescribing standards for the protective measures to be taken in respect of the closure of a mine;
4. prescribing the form and manner and time of giving public notice;
5. prescribing the form and manner in which notice is to be given to the Director and to the proponent;
6. prescribing the manner of preparing the annual report to the Director required under subsection 161d (3);
7. prescribing the form of notice to be given under subsection 161d (5);
8. prescribing, for the purposes of subsection 161f (5), the form of a warrant to enter and inspect and, for the purposes of subsection 161f (6), the form of a warrant to enter and search;
9. prescribing, for the purposes of subsection 161g (1), the information to be contained in the notice to be given to the Director relating to a producing mine or to a mine from which production is temporarily suspended;

10. prescribing quantities of material extracted and other types of work that are to be classified as advanced exploration work;
11. prescribing time periods within which duties under Part IX shall be complied with;
12. prescribing anything that by Part IX is to be or may be prescribed.

Minister may
issue licence,
lease or
patent

(3) Notwithstanding anything in this Act, in special circumstances the Minister may, subject to the approval of the Lieutenant Governor in Council, issue a licence of occupation, lease or patent of any mining lands or mining rights on such terms and conditions as the Minister considers appropriate.

83. Section 192 of the said Act is repealed.

84.—(1) Subsection 193 (1) of the said Act is amended by striking out “Notwithstanding section 192” in the first line.

(2) Subsection 193 (2) of the said Act is repealed.

85. Section 194 of the said Act is amended by adding thereto the following subsections:

Registration
of order

(2) The land registrar of the land titles or registry division in which any lands or rights mentioned in a court order made under subsection (1) are situate shall, upon receipt of the order, register it and the order is absolute and conclusive proof of the vesting in the Crown of the lands or rights affected by the order and the vesting in the Crown is not open to attack in any court by reason of the omission of any act or thing leading up to the order repealing or avoiding the patent or lease.

Non-
application
of
R.S.O. 1980,
cc. 445, 230

(3) Upon registration of the court order in the land registry office, the *Registry Act* or the *Land Titles Act*, as the case may be, ceases to apply to the lands or rights affected by the order, and the land registrar shall note that fact in the register in red ink.

Opening
lands for
prospecting,
etc.

(4) The lands and mining rights vested in the Crown under this section are not open for prospecting, staking out or lease under this Act until a date fixed by the Deputy Minister, two weeks notice of which shall be published in *The Ontario Gazette*.

86. Section 195 of the said Act is repealed and the following substituted therefor:

195. Where a freehold or leasehold interest in mining lands or mining rights reverts, other than by transfer to the Crown, the land or rights may be dealt with as unpatented Crown land. Reversion to Crown

87.—(1) Subsection 196 (2) of the said Act is amended by striking out “rate of 6 per cent” in the eighteenth and nineteenth lines and inserting in lieu thereof “prescribed percentage rate”.

(2) Subsection 196 (8) of the said Act is repealed and the following substituted therefor:

(8) An application under subsection (2) shall be accompanied by the prescribed fee. Fee

88. Subsection 197 (5) of the said Act is amended by striking out “purchase or” in the fifth line.

89. Section 198 of the said Act is repealed and the following substituted therefor:

198.—(1) The owner, lessee or licensee of any mining lands or mining rights granted under this Act or any other Act may surrender such lands or mining rights to the Crown only upon such terms as are acceptable to the Minister, and thereupon the Minister may cause a notice of determination to be filed in the proper land registry office. Voluntary surrender of mining lands

(2) An owner, lessee or licensee who surrenders mining lands or mining rights under subsection (1) may file a notice in the prescribed form with the recorder indicating that such owner, lessee or licensee wishes to retain an interest in the lands or part of the lands thereof, in the form of unpatented mining claims. Retention as unpatented mining claims

(3) Where a notice has been filed under subsection (2), the owner, lessee or licensee shall stake out or cause to be staked out and recorded in such size, form, manner and time as is prescribed, the lands in which an interest is to be retained. Staking out and recording of lands

(4) Where mining claims have not been staked out and recorded under subsection (3) within the time prescribed, the recorder may extend the time for staking out and recording or may order that the mining lands or mining rights on which the staking out and recording is to be performed are surrendered and the recorder shall, in the case where an order of surrender is made, by registered letter mailed not later than the next day after the making of the order, notify the owner, lessee or licensee of the recorder's action and the reason therefor. Extension of time by recorder or order of surrender of lands

Prospecting,
etc., on
surrendered
lands

(5) Mining lands or mining rights surrendered to the Crown under subsection (1) and which are not recorded as unpatented mining claims under subsection (3) shall not be open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, notice of which shall be published in *The Ontario Gazette* at least two weeks prior thereto.

90. Section 199 of the said Act is repealed and the following substituted therefor:

Lands
forfeited,
etc., to
Crown
R.S.O. 1980,
c. 95
1982, c. 4

199.—(1) Where mining lands or mining rights,

- (a) are forfeited to the Crown under the *Corporations Act* or the *Business Corporations Act*, 1982, or any predecessor thereof or are forfeited to the Crown for any other cause; or
- (b) have become the property of the Crown by reason of the person last seised thereof or entitled thereto having died intestate and without lawful heirs,

the Minister may cause to be registered in the proper land registry office a notice stating that forfeiture has been effected as mentioned in clause (a) or that the lands or mining rights have become the property of the Crown as mentioned in clause (b), as the case may be, and that by reason thereof the lands or mining rights and every interest therein are forfeited to and vested in, or have become the property of, the Crown, absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto, whether existing, arising or accruing before or after such forfeiture or becoming the property of the Crown, and, subject to subsection (2), such lands shall be dealt with under this Act.

Opening
forfeited,
etc., lands
for
prospect-
ing,
etc.

(2) Mining lands or mining rights so forfeited or that have become the property of the Crown are not open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks notice of which shall be published in *The Ontario Gazette*.

91. Section 200 of the said Act and the preceding heading are repealed and the following substituted therefor:

ANNULMENT OF FORFEITURE OR TERMINATION OF LEASE

Annulment
of forfeiture,
etc.

200.—(1) The Lieutenant Governor in Council, upon the recommendation of the Minister, may by order revoke, cancel or annul the forfeiture of any mining lands or mining rights under this Act or revoke, cancel or annul the termination of

any lease of mining lands under this Act or relieve from forfeiture any unpatented mining claims on such terms and conditions as the Minister considers appropriate.

(2) Where an order under subsection (1) concerns unpatented mining claims, such order shall be filed in the office of the mining recorder.

Filing order
in recorder's
office

(3) Where an order under subsection (1) concerns leases or freehold patents, the Deputy Minister shall cause the order to be registered in the proper land registry office and thereupon the mining lands or mining rights revert in the owner or lessee of the mining lands or mining rights at the time of forfeiture or termination, his or her heirs, successors or assigns, subject to any lien, mortgage or charge entered or registered prior to the forfeiture or termination and still outstanding.

Registering
order in land
registry office

(4) Where application is made for an order under subsection (1), the Minister may direct the mining lands or mining rights described in the application to be withdrawn from prospecting, staking out, sale or lease until the disposition of the application.

Withdrawal
of lands from
prospecting,
etc.

(5) The Minister may direct an application for an order under subsection (1) to be accompanied by the prescribed fee.

Fee

92. The heading preceding section 201 of the said Act is struck out and the following substituted therefor:

MINING LAND TAX

93. Section 201 of the said Act is repealed and the following substituted therefor:

201. In this Part,

Definitions

“municipality” means a city, town, village, township or improvement district;

“tax” means a tax under this Part.

94. Section 202 of the said Act is repealed and the following substituted therefor:

202. There shall be paid to the Crown in each year a tax in the prescribed amount for each hectare on any lands or mining rights to which this Part applies.

Amount of
tax

95. Section 203 of the said Act is amended by striking out “acreage” in the first line.

96.—(1) Subsection 204 (1) of the said Act is amended by striking out “acreage” in the twenty-third line.

(2) Subsection 204 (2) of the said Act is amended by striking out “acreage” in the first line.

97. Clause 205 (1) (a) of the said Act is repealed and the following substituted therefor:

(a) land has been subdivided,

(i) by a registered plan of subdivision, or

(ii) by a reference plan into parts for city, town, village or summer resort purposes,

and there is no severance of the surface and mining rights.

98. Section 207 of the said Act is amended by striking out “acreage” in the third line.

99. Section 208 of the said Act is amended by striking out “acreage” in the fourth line.

100. Section 209 of the said Act is amended by striking out “acreage” in the second line.

101. Subsection 210 (1) of the said Act is amended by striking out “acreage” in the fourth line and in the eighth line.

102.—(1) Subsection 211 (1) of the said Act is amended by striking out “acreage” in the first line.

(2) Subsection 211 (2) of the said Act is repealed and the following substituted therefor:

Fee

(2) An application under subsection (1) shall be accompanied by the prescribed fee.

103.—(1) Subsection 212 (1) of the said Act, as amended by the Statutes of Ontario, 1988, chapter 48, section 3, is further amended by striking out “acreage” in the fourth line and by striking out “certified mail” in the sixth line and inserting in lieu thereof “mail or delivered by courier service”.

(2) Subsection 212 (2) of the said Act is amended by striking out “acreage” in the sixth line.

(3) Subsection 212 (3) of the said Act is amended by striking out “acreage” in the first line.

104. Section 214 of the said Act is repealed.

105.—(1) Subsection 215 (1) of the said Act is amended by striking out “acreage” in the first line.

(2) Subsection 215 (2) of the said Act is amended by striking out “acreage” in the second line.

106. Section 217 of the said Act is amended by striking out “acreage” in the second line.

107. The Schedule to the said Act is repealed.

108.—(1) Every prospector’s licence issued or renewed under the *Mining Act*, that is in good standing on the day this section comes into force, expires on the date set out on the licence or renewal thereof, and thereafter, in the case of a licence held by a natural person, may be renewed under section 22 of the *Mining Act*, as amended by section 12 of this Act.

Prospector’s
licence
R.S.O. 1980,
c. 268

(2) The expiry provision in subsection (1) does not apply to a prospector’s licence that was issued or renewed as a lifetime licence.

Idem

(3) Where, before the 24th day of October, 1989,

Dispute or
court
proceeding

- (a) a dispute has been filed under section 56 of the *Mining Act*; or
- (b) a proceeding has been commenced in the Supreme Court to declare forfeited or void or to cancel or annul any Crown patent issued for mining lands, mining claims or mining rights,

the provisions of the *Mining Act*, as they existed before the coming into force of this Act, continue to apply to the dispute or proceeding until finally disposed of.

(4) Subsections 56 (7) and (8) of the *Mining Act*, as enacted by section 34 of this Act, apply to any re-staking by or on behalf of a transferee that has been commenced before, on or after the 24th day of October, 1989, unless, before that day, the matter in dispute has been finally disposed of under the *Mining Act*.

Re-staking

(5) Section 96 of the *Mining Act*, as it read before its re-enactment by section 61 of this Act, continues in force and

Freehold
patent

applies in respect of any application for a patent made under that section before the 24th day of October, 1989.

Relief from
forfeiture by
Mining and
Lands
Commissioner

109.—(1) Where forfeiture occurs under clause 85 (1) (c), (d) or (e) of the *Mining Act* as those clauses read before the coming into force of section 52 of this Act or under clause 85 (1) (c) of the *Mining Act*, as re-enacted by section 52 of this Act, and where an application is made to the Mining and Lands Commissioner within six months of the forfeiture, the Commissioner may make an order on such terms and conditions as the Commissioner considers just relieving the claim from forfeiture and extending the time for performing or reporting the work, or both, but no such application may be made to the Commissioner after the expiration of eight months from the day section 52 of this Act comes into force.

Performance
of assessment
work or
application
for lease

(2) Where, on the day section 76 of the *Mining Act*, as re-enacted by section 46 of this Act, comes into force, 200 days of assessment work have been performed and recorded by the holder of a mining claim under section 76 of the *Mining Act* as it read before its re-enactment by section 46 of this Act, the holder of the mining claim shall,

- (a) perform and file such annual units of assessment work as are prescribed under section 76 of the *Mining Act*, as re-enacted by section 46 of this Act; or
- (b) apply and pay for a lease of the claim within the time set out in subsection 94 (2) of the *Mining Act*, as it read before its re-enactment by section 59 of this Act, or, where applicable, within the time set out in an order of the Mining and Lands Commissioner under section 86 of the *Mining Act* as it read before its re-enactment by section 53 of this Act.

Rental rate,
subsisting
leases

110.—(1) A subsisting lease that has been issued or renewed under section 94, 95 or 97 or subsection 190 (2) of the *Mining Act*, as those provisions read before the day sections 59, 60, 62 and 82 of this Act come into force, shall continue to bear the existing rental rate until the expiration of five years from that day.

Certain leases
issued after
ss. 59, 60,
62, 82, in
force

(2) Where a lease applied for before the 24th day of October, 1989 is issued after the day sections 59, 60, 62 and 82 of this Act come into force, the lease shall bear the rental rate provided for by the *Mining Act*, as that Act read before the day sections 59, 60, 62 and 82 of this Act come into force, until the expiration of five years from the day those sections come into force.

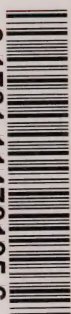
(3) Where a lease to which subsection (1) or (2) applies is renewed under section 94 of the *Mining Act*, as amended by section 59 of this Act, the lease shall, until the expiration of five years from the day sections 59, 60, 62 and 82 of this Act come into force, bear the rental rate set out in subsection 94 (8) of the *Mining Act*, as that section read before its re-enactment by section 59 of this Act. Renewal
leases

(4) Notwithstanding the provisions of a lease, after the expiration of five years from the day sections 59, 60, 62 and 82 of this Act come into force, every lease shall bear the rental rate set out in the *Mining Act* as amended by this Act. When new
rental rates
in Act prevail

111.—(1) This Act, except subsection 34 (3) and section 51, comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

(2) Subsection 34 (3) and section 51 come into force on the day this Act receives Royal Assent. Idem

112. The short title of this Act is the *Mining Amendment Act, 1989*. Short title



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